the establishment of ABLE accounts for the care of family members with disabilities, and for other purposes.

S. 1580

At the request of Mr. HARKIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1580, a bill to amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

S. 3116

At the request of Mr. KERRY, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 3116, a bill to amend the Whale Conservation and Protection Study Act to promote international whale conservation, protection, and research, and for other purposes.

S. 3134

At the request of Mr. SCHUMER, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 3134, a bill to provide for identification of misaligned currency, require action to correct the misalignment, and for other purposes.

S. 3136

At the request of Mr. DODD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 3136, a bill to amend the Internal Revenue Code of 1986 to extend and increase the exclusion for benefits provided to volunteers, firefighters and emergency medical responders.

S. 3165

At the request of Ms. LANDRIEU, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 3165, a bill to authorize the Administrator of the Small Business Administration to waive the non-Federal share requirement under certain programs.

AMENDMENT NO. 3746

At the request of Mr. WHITEHOUSE, the name of the Senator from Minnesota (Mr. FRANKEN) 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.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 510—DESIGNATING APRIL 2010 AS ''DISTRACTED DRIVING AWARENESS MONTH''

Ms. KLOBUCHAR (for herself, Mr. BAYH, Mr. BURRIS, Mr. CASEY, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. SCHUMER, Mr. ROCKEFELLER, Mrs. GILLIBRAND, and Ms. SNOWE) submitted the following resolution; which was considered and agreed to:

S. RES. 510

Whereas, in 2008, nearly 6,000 people died as a result of accidents involving a distracted driver;

Whereas 21 percent of vehicle crash injuries in 2008 involved distracted driving;

Whereas a 2009 study by the AAA Foundation for Traffic Safety found that 87 percent of the public considers texting while driving to be a ''very serious threat'' to their safety;

Whereas 6 States, the District of Columbia, and the United States Virgin Islands have enacted laws banning the use of hand-held cell phones while driving;

Whereas 23 States, the District of Columbia, and Guam have enacted laws banning texting while driving;

Whereas a 2008 study by the National Highway Traffic Safety Administration revealed that at any given moment during daylight hours more than 800,000 vehicles are being operated by someone who is using a hand-held cell phone;

Whereas the Department of Transportation has launched distraction.gov, a website devoted to raising awareness and educating the people of the United States about the dangers of distracted driving;

Whereas the Secretary of Transportation, Ray LaHood, convened a 2-day Distracted Driving Summit in September 2009;

Whereas the Department of Transportation and the National Highway Traffic Safety Administration have jointly declared April 30, 2010, to be ''No Phone Zone Day''; and

Whereas April 2010 would be an appropriate month to designate as National Distracted Driving Awareness Month: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 2010 as ''Distracted Driving Awareness Month'';

(2) encourages all people in the United States to consider the danger to others on the road and avoid distracted driving; and

(3) encourages teens, parents, teachers, and community leaders to discuss the dangers of distracted driving.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3752. 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.

SA 3753. 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 3754. 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 3755. Ms. SNOWE 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 3756. Ms. SNOWE 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 3757. Ms. SNOWE 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 3758. Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. DORGAN, and Mr. PRYOR) 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 3759. 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) 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 3760. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3761. Mr. VITTER (for himself and Mr. DEMINT) 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 3752. 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 329, strike line 15 and all that follows through page 333, line 24, and insert the following:

(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. The Comptroller of the Currency also may collect an assessment, fee, or other charge from any entity, the activities of which are supervised by the Comptroller of the Currency under section 6 of the Bank Holding Company Act of 1956, as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency in connection with such activities. 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 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.''.

SA 3753. 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 372, between lines 2 and 3, insert the following:

SEC. 343. NATIONWIDE DEPOSIT CAP FOR MERGER TRANSACTIONS AND ACQUISITIONS.

(a) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—

(1) CONCENTRATION LIMIT FOR BANK HOLDING COMPANIES.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended—

(A) in paragraph (2), by striking ''paragraph (1)(A)'' each place that term appears and inserting ''subsection (a)''; and

(B) by adding at the end the following:

''(3) BANK DEFINED.—For purposes of this subsection, the term 'bank' means an insured depository institution.''.

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended—

(A) by redesignating paragraph (12) as paragraph (13); and

(B) by inserting after paragraph (11) the following:

''(12) NATIONWIDE DEPOSIT CAP.—The responsible agency may not approve an application for a 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.''.

(2) PARALLEL REQUIREMENT.—Section 44(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(2)(A)) is amended to read as follows:

''(A) NATIONWIDE CONCENTRATION LIMITS.—The responsible agency may not approve an application for an interstate merger transaction involving 2 or more insured depository institutions if the resulting insured depository institution (including all insured depository institutions which are affiliates of such 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.''.

(c) AMENDMENTS TO THE HOME OWNERS' LOAN ACT.—Section 10(e)(2) of the Home Owners' Loan Act (12 U.S.C. 467a(e)(2)) is amended—

(1) in subparagraph (C), by striking ''or'' at the end; and

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

(3) by adding at the end the following:

''(E) in the case of an application involving an acquisition of an insured depository institution, if the company (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.''.

SA 3754. 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 23, strike lines 6 through 12 and insert the following:

(2) NONVOTING MEMBERS.—Nonvoting members, who shall serve in an advisory capacity, and shall not be excluded from any of the proceedings, meetings, discussions, and deliberations of the Council, shall consist of—

(A) the Director of the Office of Financial Research;

(B) a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners, and who shall serve for not longer than a single term of 2 years, beginning on the date on which that State insurance commissioner is selected;

(C) a State banking supervisor, to be designated by a selection process determined by the State bank supervisors, and who shall serve for not longer than a single term of 2 years, beginning on the date on which that State banking supervisor is selected; and

(D) a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners, and who shall serve for not longer than a single term of 2 years, beginning on the date on which that State securities commissioner is selected.

SA 3755. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1071.

SA 3756. Ms. SNOWE 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 1273, beginning on line 24, strike ''that is not engaged significantly in offering or providing consumer financial products or services.'' and insert the following: ''that does not derive more than 50 percent of its revenues from the sale of nonfinancial goods and services on credit, as determined by reference to the gross receipts in the prior calendar year of that merchant, retailer, or seller. For the first year in which a business is in operation, the Bureau shall determine which business types are likely to derive 50 percent or less of their revenue from the sale of goods and services on credit, and presumptively exempt them from regulation.''.

SA 3757. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 1031, add the following:

(f) CONSIDERATION OF SEASONAL INCOME.—The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

SA 3758. Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. DORGAN, and Mr. PRYOR) 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 1237, line 6, strike ''law,'' and insert ''law (other than section 1024(g) of this title),''.

On page 1254, line 15, strike ''To'' and insert ''Except as provided in paragraph (3), to''.

On page 1255, line 10, strike ''(a)(1)(A),'' and insert ''(a)(1),''.

On page 1256, line 25, strike ''law,'' and insert ''law (other than subsection (g)),''.

On page 1257, after line 25, insert the following:

(g) PRESERVATION OF FEDERAL TRADE COMMISSION AUTHORITY.—

(1) IN GENERAL.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act or any other law, other than an enumerated consumer law.

(2) CERTAIN ENFORCEMENT ACTIONS.—The Federal Trade Commission may enforce, under the Federal Trade Commission Act, a rule with respect to an unfair, deceptive, or abusive act or practice issued by the Bureau as to a person subject to the Federal Trade Commission's jurisdiction under that Act, and a violation of such a rule shall be treated as a violation of a rule issued under section 18 of that Act (15 U.S.C. 57a) with respect to unfair or deceptive acts or practices. The Bureau may enforce, under subtitle E, a rule with respect to an unfair or deceptive act or practice issued by the Federal Trade Commission as to a covered person.

On page 1375, beginning with line 7, strike through line 5 on page 1376 and insert the following:

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—The Federal Trade Commission's authority under an enumerated consumer law to conduct a rulemaking, issue official guidelines, or conduct a study or issue a report mandated by such law, shall be transferred to the Bureau on the designated transfer date. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission to the Bureau.

(B) FEDERAL TRADE COMMISSION AUTHORITY.—The Bureau shall have all powers and duties respecting rulemaking, issuing guidelines, conducting mandated studies, and issuing mandated reports contained within the enumerated consumer laws that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

On page 1462, line 5, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1464, line 10, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1472, line 4, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1477, strike lines 15 through 21 and insert the following:

''(e) REGULATORY AUTHORITY.—

''(1) BUREAU OF CONSUMER FINANCIAL PROTECTION.—The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this Act. Except as provided in paragraph (2), the regulations prescribed by the Bureau under this subsection shall apply to any person that is subject to this Act, notwithstanding the enforcement authorities granted to other agencies under this section.

''(2) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall issue regulations to implement sections 615(e) and 628 of this Act with respect to entities within its authority under section 621 of this Act. The regulations issued by the Bureau under paragraph (1) shall not apply to those entities.''; and

On page 1482, line 1, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1485, line 24, strike ''and'' after the semicolon.

On page 1486, line 2, insert ''and'' after the semicolon.

On page 1486, between lines 2 and 3, insert the following:

(C) by adding at the end the following: ''Notwithstanding the preceding sentence, only the Federal Trade Commission shall prescribe regulations to implement section 501(b) with respect to entities subject to Federal Trade Commission enforcement under section 505(a).''.

On page 1500, line 23, strike the closing quotation marks, the semicolon, and ''and''.

On page 1500, between lines 23 and 24, insert the following:

''(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this section.''; and

On page 1516, line 1, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

SA 3759. 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) 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 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.

Strike section 605.

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,''.

SA 3760. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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.''.

SA 3761. Mr. VITTER (for himself and Mr. DEMINT) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title XII.

ORDER FOR RECORD TO REMAIN OPEN

Mr. DODD. Mr. President, I ask unanimous consent that the RECORD remain open today until 1:30 p.m. for the introduction of legislation, submissions of statements, and cosponsorships.

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

DISTRACTED DRIVING AWARENESS MONTH

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 510, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 510) designating April 20, 2010, as ''Distracted Driving Awareness Month.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 510) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 510

Whereas, in 2008, nearly 6,000 people died as a result of accidents involving a distracted driver;

Whereas 21 percent of vehicle crash injuries in 2008 involved distracted driving;

Whereas a 2009 study by the AAA Foundation for Traffic Safety found that 87 percent of the public considers texting while driving to be a ''very serious threat'' to their safety;

Whereas 6 States, the District of Columbia, and the United States Virgin Islands have enacted laws banning the use of hand-held cell phones while driving;

Whereas 23 States, the District of Columbia, and Guam have enacted laws banning texting while driving;

Whereas a 2008 study by the National Highway Traffic Safety Administration revealed that at any given moment during daylight hours more than 800,000 vehicles are being operated by someone who is using a hand-held cell phone;

Whereas the Department of Transportation has launched distraction.gov, a website devoted to raising awareness and educating the people of the United States about the dangers of distracted driving;

Whereas the Secretary of Transportation, Ray LaHood, convened a 2-day Distracted Driving Summit in September 2009;

Whereas the Department of Transportation and the National Highway Traffic Safety Administration have jointly declared April 30, 2010, to be ''No Phone Zone Day''; and

Whereas April 2010 would be an appropriate month to designate as National Distracted Driving Awareness Month: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 2010 as ''Distracted Driving Awareness Month'';

(2) encourages all people in the United States to consider the danger to others on the road and avoid distracted driving; and

(3) encourages teens, parents, teachers, and community leaders to discuss the dangers of distracted driving.

ORDERS FOR MONDAY, MAY 3, 2010

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 2 p.m. on Monday, May 3; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of S. 3217, Wall Street reform.

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

PROGRAM

Mr. DODD. Mr. President, there will be no rollcall votes during Monday's session of the Senate.

ADJOURNMENT UNTIL MONDAY, MAY 3, 2010

Mr. DODD. 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 12:54 p.m., adjourned until Monday, May 3, 2010 at 2 p.m.

proud to carry out each year, and I look forward to the Senate taking up and passing this resolution.

In 2009, 116 law enforcement officers died while serving in the line of duty. We honor their memory. Though this is a decrease from 2008, it is no less tragic a loss to our Federal and State law enforcement community and to their families and friends. Each year we commemorate the bravery of so many in law enforcement, and our Nation's peace officers deserve our commitment to provide them with the tools they need to stay safe and to do their jobs as effectively as they can.

Currently, more than 900,000 men and women work tirelessly to protect our communities, our schools, and our children. They investigate and apprehend the most violent criminals and strive to keep our communities safe and secure. Since the first recorded police death in 1792, the names of 18,983 law enforcement officers who have made the ultimate sacrifice have been added to the National Law Enforcement Officers Memorial.

I also take this opportunity to recognize that the names of 324 fallen officers will be added to the National Law Enforcement Officers Memorial on May 13 during a candlelight vigil held in their honor. These are officers from the past and present whose memory will be preserved for all time at the memorial, ensuring that their bravery and sacrifice will not be forgotten. I especially want to recognize two brave Vermonters who gave their lives in the line of duty, and whose names will be added to the Memorial this year: John Henry Collette of the Addison County Sheriff's Office, died July 17, 1932, and Robert Daniel Rossier of the Vermont Highway Patrol, died September 9, 1935.

National Peace Officers Memorial Day provides the people of the United States, in their communities, in their State capitals, and in the Nation's Capital, with the opportunity to honor and reflect on the extraordinary service and sacrifice given year after year by those members of our police forces. More than 20,000 peace officers are expected to gather in Washington in the days leading up to May 15, to join with the families of their fallen comrades. It is right that the Senate show its respect on this occasion, and I am proud to honor their service and their memory. I urge all Senators to join me in approving this resolution.

SENATE RESOLUTION 512—DESIGNATING JUNE 2010 AS ''NATIONAL APHASIA AWARENESS MONTH'' AND SUPPORTING EFFORTS TO INCREASE AWARENESS OF APHASIA

Mr. JOHNSON submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 512

Whereas aphasia is a communication impairment caused by brain damage that typically results from a stroke;

Whereas aphasia can also occur with other neurological disorders, such as a brain tumor;

Whereas many people with aphasia also have weakness or paralysis in the right leg and right arm, usually due to damage to the left hemisphere of the brain, which controls language and movement on the right side of the body;

Whereas the effects of aphasia may include a loss of or reduction in the ability to speak, comprehend, read, and write, but the intelligence of a person with aphasia remains intact;

Whereas, according to the National Institute of Neurological Disorders and Stroke (referred to in this preamble as the ''NINDS''), stroke is the third-leading cause of death in the United States, ranking behind heart disease and cancer;

Whereas stroke is a leading cause of serious, long-term disability in the United States;

Whereas the NINDS estimates that there are about 5,000,000 stroke survivors in the United States;

Whereas the NINDS estimates that people in the United States suffer about 750,000 strokes per year, with approximately ⅓ of the strokes resulting in aphasia;

Whereas, according to the NINDS, aphasia affects at least 1,000,000 people in the United States;

Whereas the NINDS estimates that more than 200,000 people in the United States acquire the disorder each year;

Whereas the National Aphasia Association is a unique organization that provides communication strategies, support, and education for people with aphasia and their caregivers throughout the United States; and

Whereas, as an advocacy organization for people with aphasia and their caregivers, the National Aphasia Association envisions a world that recognizes the ''silent'' disability of aphasia and provides opportunity and fulfillment for people affected by aphasia: Now, therefore, be it

Resolved, That the Senate—

(1) designates June 2010 as ''National Aphasia Awareness Month'';

(2) supports efforts to increase awareness of aphasia;

(3) recognizes that strokes, a primary cause of aphasia, are the third-largest cause of death and disability in the United States;

(4) acknowledges that aphasia deserves more attention and study in order to find new solutions for individuals experiencing aphasia and their caregivers;

(5) supports efforts to make the voices of people with aphasia heard, because people with aphasia are often unable to communicate with others; and

(6) encourages all people in the United States to observe National Aphasia Awareness Month with appropriate events and activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3762. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3763. Mr. PRYOR 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 3764. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3765. Mr. FRANKEN (for himself, Mr. DURBIN, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3766. Mr. DURBIN 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 3767. Mr. DURBIN 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 3768. Mr. DURBIN (for himself and 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 3769. Mr. DURBIN 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 3770. Mr. DURBIN 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 3771. Mr. DURBIN (for himself, Mr. LEAHY, and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3772. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3773. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3774. Mr. LEMIEUX submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3775. Mr. WYDEN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3776. Mr. SPECTER (for himself, Mr. REED, Mr. KAUFMAN, Mr. DURBIN, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. MENENDEZ, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. FEINGOLD, and Mr. MERKLEY) 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 3777. 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 3778. Mr. UDALL, of Colorado (for himself, Mr. LUGAR, Mr. BOND, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. LEVIN, Mr. LIEBERMAN, Mrs. MCCASKILL, and Mrs. SHAHEEN) 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 3779. Mr. FEINGOLD 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 3780. Mr. FEINGOLD 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 3781. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3782. Mr. CORKER (for himself, Mr. ENZI, and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3783. Mr. CORKER (for himself, Mr. ENZI, Mr. ISAKSON, Mr. CHAMBLISS, and Mr. BARRASSO) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3784. Mr. CORKER (for himself, Mr. CHAMBLISS, Mr. ISAKSON, and Mr. GREGG) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3762. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE XIII—COMMISSION ON FREEDOM OF INFORMATION ACT PROCESSING DELAYS

SEC. 1301. COMMISSION ON FREEDOM OF INFORMATION ACT PROCESSING DELAYS.

(a) SHORT TITLE.—This section may be cited as the ''Faster FOIA Act of 2010''.

(b) ESTABLISHMENT.—There is established the Commission on Freedom of Information Act Processing Delays (in this section referred to as the ''Commission'' for the purpose of conducting a study relating to methods to help reduce delays in processing requests submitted to Federal agencies under section 552 of title 5, United States Code (commonly referred to as the ''Freedom of Information Act'').

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 16 members of whom—

(A) 3 shall be appointed by the chairman of the Committee on the Judiciary of the Senate;

(B) 3 shall be appointed by the ranking member of the Committee on the Judiciary of the Senate;

(C) 3 shall be appointed by the chairman of the Committee on Government Reform of the House of Representatives;

(D) 3 shall be appointed by the ranking member of the Committee on Government Reform of the House of Representatives;

(E) 1 shall be appointed by the Attorney General of the United States;

(F) 1 shall be appointed by the Director of the Office of Management and Budget;

(G) 1 shall be appointed by the Archivist of the United States; and

(H) 1 shall be appointed by the Comptroller General of the United States.

(2) QUALIFICATIONS OF CONGRESSIONAL APPOINTEES.—Of the 3 appointees under each of subparagraphs (A), (B), (C), and (D) of paragraph (1) at least 2 shall have experience in academic research in the fields of library science, information management, or public access to Government information.

(3) TIMELINESS OF APPOINTMENTS.—Appointments to the Commission shall be made as expeditiously as possible, but not later than 60 days after the date of enactment of this Act.

(d) STUDY.—The Commission shall conduct a study to—

(1) identify methods that—

(A) will help reduce delays in the processing of requests submitted to Federal agencies under section 552 of title 5, United States Code; and

(B) ensure the efficient and equitable administration of that section throughout the Federal Government;

(2) examine whether the system for charging fees and granting waivers of fees under section 552 of title 5, United States Code, needs to be reformed in order to reduce delays in processing requests; and

(3) examine and determine—

(A) why the Federal Government's use of the exemptions under section 552(b) of title 5, United States Code, increased during fiscal year 2009;

(B) the reasons for any increase, including whether the increase was warranted and whether the increase contributed to FOIA processing delays;

(C) what efforts were made by Federal agencies to comply with President Obama's January 21, 2009 Presidential Memorandum on Freedom of Information Act Requests and whether those efforts were successful; and

(D) make recommendations on how the use of exemptions under section 552(b) of title 5, United States Code, may be limited.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to Congress and the President containing the results of the study under this section, which shall include—

(1) a description of the methods identified by the study;

(2) the conclusions and recommendations of the Commission regarding—

(A) each method identified; and

(B) the charging of fees and granting of waivers of fees; and

(3) recommendations for legislative or administrative actions to implement the conclusions of the Commission.

(f) STAFF AND ADMINISTRATIVE SUPPORT SERVICES.—The Archivist of the United States shall provide to the Commission such staff and administrative support services, including research assistance at the request of the Commission, as necessary for the Commission to perform its functions efficiently and in accordance with this section.

(g) INFORMATION.—To the extent permitted by law, the heads of executive agencies, the Government Accountability Office, and the Congressional Research Service shall provide to the Commission such information as the Commission may require to carry out its functions.

(h) COMPENSATION OF MEMBERS.—Members of the Commission shall serve without compensation for services performed for the Commission.

(i) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(j) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Commission.

(k) TERMINATION.—The Commission shall terminate 30 days after the submission of the report under subsection (e).

SA 3763. Mr. PRYOR 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 1013, line 18, strike ''and'' and all that follows through line 20 and insert the following:

''(ii) a description of any internal review of rating procedures and methodologies conducted by the nationally recognized statistical rating organization;

''(iii) an evaluation of how well the nationally recognized statistical rating organization adheres to the rating procedures and methodologies of the nationally recognized statistical rating organization;

''(iv) a narrative response agreeing or disagreeing with the results of the most recent annual examination of the nationally recognized statistical rating organization carried out by the Commission under subsection (p)(3); and

''(v) a certification that the report is accurate and complete.

On page 1016, line 18, strike ''and'' and all that follows through line 23 and insert the following:

''(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization;

''(ix) whether the nationally recognized statistical rating organization sufficiently discloses the rating procedures and methodologies of the nationally recognized statistical rating organization; and

''(x) whether the rating procedures and methodologies of the nationally recognized statistical rating organization are sound.

SA 3764. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the

United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1090, between lines 18 and 19, insert the following:

SEC. 974. EXEMPTION FOR NON-ACCELERATED FILERS.

(a) IN GENERAL.—Section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) is amended by adding at the end the following:

''(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is not an accelerated filer, with the meaning of Rule 12b–2 of the Commission, as in effect on the date of enactment of this subsection, or any successor thereto.''.

(b) STUDY.—The Commission and the Comptroller General of the United States shall jointly conduct a study to determine—

(1) how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between $75,000,000 and $250,000,000 for the relevant reporting period, while maintaining investor protections for such companies; and

(2) whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section 404(b) would encourage companies to list on exchanges in the United States in the initial public offerings of the companies.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Commission and the Comptroller General shall submit to Congress a report of the findings under the study required by subsection (b).

SA 3765. Mr. FRANKEN (for himself, Mr. DURBIN, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

SEC. 212. EXCEPTIONS TO DISCHARGE IN BANKRUPTCY.

Section 523(a)(8) of title 11, United States Code, is amended by striking ''dependents, for'' and all that follows through the end of subparagraph (B) and inserting ''dependents, for an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit or made under any program funded in whole or in part by a governmental unit or an obligation to repay funds received from a governmental unit as an educational benefit, scholarship, or stipend;''.

SA 3766. Mr. DURBIN 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 1258, line 8, strike ''or''.

On page 1258, line 11, strike the period and insert ''; or''.

On page 1258, between lines 11 and 12, insert the following:

(C) an insured depository institution or an insured credit union with total assets of more than $1,000,000,000 and less than $10,000,000,000, and any affiliate thereof—

(i) which depository institution, credit union, or affiliate, considered singly or collectively, extends, services, or acquires a substantial amount of credit that is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether such credit is provided by the educational institution that the student attends; and

(ii) only with respect to such activities relating to the credit described in clause (i).

SA 3767. Mr. DURBIN 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 1289, strike lines 9 through 13.

On page 1289, line 14, strike ''(p)'' and insert ''(o)''.

On page 1289, line 18, strike ''(q)'' and insert ''(p)''.

On page 1289, line 24, strike ''(r)'' and insert ''(q)''.

SA 3768. Mr. DURBIN (for himself and 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 1206, strike lines 14 through 21 and insert the following:

Subtitle A—Consumer Financial Protection Agency

SEC. 1011. ESTABLISHMENT OF THE CONSUMER FINANCIAL PROTECTION AGENCY.

(a) ESTABLISHMENT.—There is established the Consumer Financial Protection Agency, which shall be an independent establishment, as defined under section 104 of title 5, United States Code, and shall regulate the provision of consumer financial products or services under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

On page 1210, strike line 1 and all that follows through page 1211, line 19.

On page 1235, line 24, strike '', except that nothing'' and all that follows through page 1236, line 3, and insert a period.

On page 1243, strike line 15 and all that follows through page 1248, line 18.

On page 1456, strike line 6 and all that follows through page 1457, line 4, and insert the following:

Inspector General Act of 1978 (5 U.S.C. App.) is amended in section 8G(a)(2), by inserting ''the Consumer Financial Protection Agency,'' before ''and the United States Postal Service''.

Strike ''Bureau of Consumer Financial Protection'' each place that term appears and insert ''Consumer Financial Protection Agency''.

Strike ''Bureau'' each place that term appears and insert ''Agency''.

SA 3769. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. REASONABLE FEES FOR ELECTRONIC DEBIT TRANSACTIONS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

''SEC. 920. REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.

''(a) REGULATORY AUTHORITY.—The Board shall have authority to establish rules, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that is charged with respect to an electronic debit transaction.

''(b) REASONABLE FEES.—The amount of any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction shall be reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(c) RULEMAKING REQUIRED.—The Board shall issue final rules, not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in subsection (b) is reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(d) CONSIDERATIONS.—In issuing rules required by this section, the Board shall—

''(1) consider the functional similarity between—

''(A) electronic debit transactions; and

''(B) checking transactions that are required within the Federal Reserve bank system to clear at par;

''(2) distinguish between—

''(A) the actual incremental cost incurred by an issuer or payment card network for the role of the issuer or the payment card network in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under subsection (b); and

''(B) other costs incurred by an issuer or payment card network which are not specific to a particular electronic debit transaction, which costs shall not be considered under subsection (b); and

''(3) consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

''(e) EXEMPTION FOR SMALL ISSUERS.—This subsection shall not apply to issuers that, together with affiliates, have assets of less than $1,000,000,000, and the Board shall exempt such issuers from rules issued under subsection (c).

''(f) EFFECTIVE DATE.—Subsection (b) shall become effective 12 months after the date of enactment of the Consumer Financial Protection Act of 2010.

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

''(1) DEBIT CARD.—The term 'debit card' means any card or device issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means.

''(2) ELECTRONIC DEBIT TRANSACTION.—The term 'electronic debit transaction' means a transaction in which a person uses a debit card or other similar device that has been approved for use in a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services.

''(3) INTERCHANGE TRANSACTION FEE.—The term 'interchange transaction fee' means any fee established by a payment card network that has been established for the purpose of compensating an issuer or payment card network for its involvement in an electronic debit transaction.

''(4) ISSUER.—The term 'issuer' means a financial institution that issues debit cards, stored-value cards, credit cards, or other similar devices that have been approved for use in a payment card network.

''(5) PAYMENT CARD NETWORK.—The term 'payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person is required to access in order to accept as a form of payment a specific brand of accepted card, or other means of access, including a debit card, stored-value card, credit card, or other device that may be used to carry out debit, prepaid, or credit transactions.

''(6) STORED-VALUE CARD.—The term 'stored-value card' means any card or device issued or approved for use through a payment card network that stores funds or monetary value in any electronic format, whether or not specially encrypted, that is capable of being retrieved and transferred electronically. A stored-value card includes a prepaid debit card or any other similar device, regardless of whether the amount of the funds or monetary value may be increased or reloaded.''.

SA 3770. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title X, add the following:

Subtitle I—Fair Credit Card Fees

SEC. 1121. SHORT TITLE.

This subtitle may be cited as the ''Fair Credit Card Fees for Taxpayer Dollars Act of 2010''.

SEC. 1122. DEFINITIONS.

(a) PAYMENT CARD NETWORK.—For purposes of this subtitle, the term ''payment card network'' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person is required to access in order to accept as a form of payment a specific brand of accepted card, or other means of access, including a debit card, credit card, or other device that may be used to carry out debit or credit transactions.

(b) FEDERAL ENTITY.—For purposes of this subtitle, the term ''Federal entity'' means any Federal agency, department, bureau, government corporation, or designated Federal entity, as that term is defined in section 8G of the Inspector General Act (5 U.S.C. App.).

SEC. 1123. FAIR FEES FOR FEDERAL GOVERNMENT ACCEPTANCE OF PAYMENT CARDS.

In any transaction in which a Federal entity accepts, as payment for the sale of goods or services or for revenue collection, a particular credit card, debit card, or similar payment device bearing the logo of a payment card network, the payment card network shall not establish rates for interchange fees or other fees involved in the transaction that are higher than the lowest fee rates established by that payment card network for any other transaction involving that same credit card, debit card, or similar payment device.

SEC. 1124. REPORTING REQUIREMENT.

If a credit card, debit card, or similar payment device bearing the logo of a payment card network is accepted by any Federal entity as payment for the sale of goods or services or for revenue collection, the payment card network shall provide information on at least an annual basis to the Secretary demonstrating that the rates for the interchange fees and other fees established by the payment card network for transactions involving Federal entities are no higher than the lowest rates established by that payment card network for any other transaction involving that same credit card, debit card, or similar payment device.

SEC. 1125. ENFORCEMENT.

(a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Any failure to comply with the provisions of this subtitle shall be treated as a violation of a rule defining an unfair or deceptive act or practice described under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ACTIONS BY THE FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall enforce the provisions of this subtitle 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 subtitle.

SA 3771. Mr. DURBIN (for himself, Mr. LEAHY, and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. LIMITATION ON ANTI-COMPETITIVE PAYMENT CARD NETWORK RESTRICTIONS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

''SEC. 120. LIMITATION ON ANTI-COMPETITIVE PAYMENT CARD NETWORK RESTRICTIONS.

''(a) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A COMPETING PAYMENT CARD NETWORK.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment through the use of a card or device of another payment card network.

''(b) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, check, debit card, stored-value card or credit card.

''(c) NO RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to set a minimum or maximum dollar value for the acceptance by that person of any form of payment.

''(d) DEFINITIONS.—As used in this subsection, the following definitions shall apply:

''(1) DEBIT CARD.—The term 'debit card'—

''(A) means any card or device issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means; and

''(B) includes a stored-value card linked to any asset account.

''(2) DISCOUNT.—The term 'discount'—

''(A) means a reduction made from the price that customers are informed is the regular price; and

''(B) does not include any means of increasing the price that customers are informed is the regular price.

''(3) PAYMENT CARD NETWORK.—The term 'payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person is required to access in order to accept as a form of payment a specific brand of accepted card, or other means of access, including a debit card, stored-value card, credit card, or other device that may be used to carry out debit, stored-value, or credit transactions.

''(4) STORED-VALUE CARD.—The term 'stored-value card' means any card or device issued or approved for use through a payment card network that stores funds or monetary value in any electronic format, whether or not specially encrypted, that is capable of being retrieved and transferred electronically. A stored-value card includes a prepaid debit card or any other similar device, regardless of whether the amount of the funds or monetary value may be increased or reloaded.''.

SA 3772. Mr. SCHUMER 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, add the following:

Subtitle I—Financial Consumers Association

SEC. 1121. SHORT TITLE.

This subtitle may be cited as the ''Financial Consumers Association Act of 2010''.

SEC. 1122. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) financial services consumers and depositors are an integral part of the financial system and are affected by the safety and soundness of the financial industry;

(2) deceptive, illegal, and speculative financial practices have harmed public confidence in the integrity and fairness of many United States financial institutions, and threaten the basic strengths of the United States economic system;

(3) contributing to the loss of public confidence are perceptions of inadequate oversight and insufficient independence between financial institutions and their regulators;

(4) major factors contributing to the recent financial crisis include regulatory failures to adequately police the financial services markets for crime, unfair or deceptive practices, fraud, lack of transparency, and mismanagement;

(5) the financial industry has enjoyed virtually unlimited access to represent its interest before Congress, the courts, and State and Federal regulators, while financial services consumers have had limited representation before Congress and financial regulatory entities;

(6) the resources available for organized representation of consumers in the financial industry need to be expanded so citizens can better monitor the performance of State and Federal agencies that regulate their financial institutions and participate in public policy debates regarding the oversight of these financial institutions;

(7) the creation of a public purpose, democratically controlled, self-funded, nationwide membership association of financial services consumers is an effective way to enhance the representation of consumers in the financial services industry and to meet the expanding information needs of consumers in the financial services market;

(8) the requirement that informational and statutory inserts be included in the paper mailings and email correspondence, digital or other electronic means, of covered persons is essential to the creation, maintenance, and funding of such an association;

(9) the Federal Government has a substantial interest in the creation of a public purpose, democratically controlled, self-funded, nationwide membership association of financial services consumers to enhance their representation and to effectively combat unsound financial practices;

(10) the creation of such an Association is not meant to substitute for, but augment, the activities of existing or future regulatory bodies whose sole or partial focus is the protection of financial services consumers; and

(11) consumers have more complex financial choices today than ever before, but not enough information with which to make those choices.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to establish a public purpose, nonprofit, democratically controlled, membership association of financial services consumers;

(2) to give the Association a mandate to inform and represent financial services consumers, and to further the effective and vigorous oversight of covered persons;

(3) to establish democratic rules of governance for the Association; and

(4) to require any covered person to periodically include inserts concerning the Association within their statements and billing statements to financial services consumers.

SEC. 1123. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) ASSOCIATION.—The term ''Association'' means the Financial Consumers Association established in accordance with this subtitle.

(2) ASSOCIATION DIRECTOR.—The terms ''Association director'' and ''director'' mean any person duly elected or appointed to the Association board of directors pursuant to this subtitle, except as the context otherwise requires.

(3) INSERT CARRIER.—The term ''insert carrier'' includes any email, digital, or other electronic notice or paper deposit account statement which—

(A) indicates the balance on a deposit account; or

(B) involves an outstanding deposit account contract or agreement between an insured depository institution and a customer of such institution.

(4) MEMBER.—The term ''member'' means any person who meets the requirements for membership in the Association, as set forth in this subtitle.

(5) REGULATORY AGENCY.—The term ''regulatory agency'' means any governmental office, agency, department, or commission of the Federal Government, that regulates, monitors, directs, or governs publicly traded corporations, financial services, or consumer transactions.

(6) REGULATORY PROCEEDING.—The term ''regulatory proceeding'' means any rulemaking, adjudication, or ancillary proceeding conducted by any governmental office, agency, department, or commission at the Federal, State, or local level, that affects any covered person.

(7) STATUTORY INSERT.—The term ''statutory insert'' means any digital or printed statement, card, or envelope and statement combination, or a statement, application, and pre-addressed business reply envelope used by the Association to solicit information and contributions or membership fees from consumers, financial services customers, and to explain the purpose, history, nature, activities, achievements, and membership criteria of the Association.

(8) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means the Committee on Banking, Housing, and Urban Affairs and the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the Senate, and the Committee on Financial Services and the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the House of Representatives, and any successor committees, as may be constituted.

(9) CAMPAIGN CONTRIBUTION.—The term ''campaign contribution'' means any money, good, service, credit, or other benefit provided or promised for the purpose of electing an Association Director.

(10) CAMPAIGN EXPENDITURE.—The term ''campaign expenditure'' means any payment, use, distribution, or gift of money or anything of value made or promised for the purpose of electing an Association Director.

(11) IMMEDIATE FAMILY.—The term ''immediate family'' means a person's spouse and legal dependents.

SEC. 1124. ESTABLISHMENT OF THE ASSOCIATION.

(a) CHARTER.—There is authorized to be established a nonprofit corporation by the interim board of directors to be known as the ''Financial Consumers Association''. The Association shall be subject to the provisions of this Act, and, to the extent consistent with this Act, to the District of Columbia Nonprofit Corporations Act. The main office of the Association shall be located in Washington, DC.

(b) NONGOVERNMENTAL STATUS.—The Association shall be a private corporation and shall not, for any purpose, be considered to be a department, agency, or instrumentality of the United States Government. An officer or employee of the corporation shall not, for any purpose, be considered to be an officer or employee of the Federal Government.

(c) REGIONAL AND LOCAL OFFICES.—The Association may establish regional offices as needed, in any of the several States.

(d) BYLAWS.—Except as provided in this Act and in the District of Columbia Nonprofit Corporations Act, the affairs of the Association shall be regulated as determined in the bylaws of the Association.

(e) NONPROFIT, NONSTOCK STATUS.—The Association chartered under this section—

(1) shall be a nonprofit corporation; and

(2) may not issue any shares of stock or other securities or pay any dividends.

(f) MEMBERSHIP.—The membership of the Association shall consist solely of individuals who—

(1) are 16 years of age or older; and

(2) have contributed the required annual membership fee to the Association.

(g) MEMBERSHIP FEE.—

(1) INITIAL FEE.—Until the end of the 180-day period beginning on the date of the first election of directors, the annual membership fee of the Association shall be $10.

(2) PERMANENT MEMBERSHIP FEES DETERMINED BY BOARD OF DIRECTORS.—After the end of the 180-day period referred to in this subsection, the Association may, by vote of the board of directors, alter the annual membership fee. The board of directors shall adopt a reduced fee structure, offering reduced-cost membership fees for low-income populations and senior citizens.

(h) POLITICAL CONTRIBUTIONS PROHIBITED.—The Association shall not make any contributions to any political candidate or

party, or to any national or State political committee, as defined in the Federal Election Campaign Act of 1971, or participate in or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.

SEC. 1125. AUTHORIZATION OF APPROPRIATIONS AND ALLOTMENTS OF GRANTS.

There is authorized to be appropriated to the Bureau, for the purpose of establishing the Association, $5,000,000 for the fiscal year ending 1 year after the date of enactment of this Act.

SEC. 1126. MISSION, DUTIES, AND POWERS OF THE ASSOCIATION.

(a) MISSION.—The Association shall advance the rights and remedies available to consumers with respect to financial services, by developing initiatives to reduce the use of dangerous features in financial products and services, and to improve the flow of accurate information from covered persons to consumers.

(b) DUTIES.—The duties of the Association shall be—

(1) to inform, educate, and advise consumers about the actions of covered persons;

(2) to represent and promote the interests of consumers in financial services, collectively, and, when necessary, to negotiate on behalf of financial services consumers, individually, with respect to covered persons;

(3) to take affirmative measures to encourage membership by low- and moderate-income and minority consumers, and to disseminate information and advice to consumers;

(4) to inform, insofar as possible, consumers about the mission of the Association, including the procedures for obtaining membership in the Association;

(5) to provide consumers with information about how initiatives of covered person will affect consumers;

(6) to monitor the availability and quality of financial services to low- and moderate-income constituencies and the elderly; and

(7) to develop data to assist financial services consumers in making informed decisions in the marketplace.

(c) POWERS.—In addition to the rights and powers provided by other provisions of this Act, the Association shall—

(1) represent the interests of consumers in general before Federal regulatory agencies, legislative bodies, the courts, and in other public forums;

(2) initiate, intervene as a party, or otherwise participate on behalf of consumers in any regulatory proceeding that the Association reasonably determines may affect the interests of consumers;

(3) conduct, support, and assist research, surveys, and investigations in financial services consumer matters;

(4) maintain up-to-date membership rolls, and to keep them in confidence to the extent required by the provisions of this Act;

(5) contract for services which cannot reasonably be performed by its employees; and

(6) solicit and accept gifts, loans, grants, or other aid in order to support activities concerning the interests of financial services consumers, except that the Association may not accept gifts, loans, or other aid from any financial services providers or from any director, employee, agent, or member of the immediate family of a director, employee, or agent of any covered person.

SEC. 1127. INSERT AND NOTICE PROVISIONS.

(a) INCLUSION IN STATEMENTS OF COVERED PERSONS.—

(1) IN GENERAL.—Each covered person shall include, or cause its agent to prominently include, a statutory insert or an Association insert in quarterly mailings to its customers each year.

(2) STATUTORY INSERT.—The Association shall have the right to have statutory inserts prominently included in the paper mailings to the customers of each covered person once each calendar quarter. The Association shall also have the right to have covered persons send the information contained in the statutory insert to financial services consumers once each calendar quarter via email, digital or other electronic means. The Association shall only pay the reasonable incremental costs of the email, digital, or electronic distribution of such information.

(3) ASSOCIATION INSERTS.—

(A) IN GENERAL.—In addition, the Association shall have the right to include in the mailings and via email, digital or other electronic means, referred to in paragraph (2) once each calendar quarter, an insert that it prepares and furnishes to any institution required to carry a statutory insert.

(B) LIMITATION.—An insert furnished by the Association shall be limited to—

(i) soliciting information and contributions or membership fees from financial services consumers; and

(ii) explaining—

(I) the purpose, history, nature, activities, and achievements of the Association;

(II) that the Association membership is open to any resident of the United States who is 16 years of age or older;

(III) that the Association is not connected to any covered person;

(IV) that the Association is a nonprofit association directed by its financial services consumer members;

(V) the procedure for contributing to or becoming a member of the Association; and

(VI) the yearly membership fee.

(b) FEDERAL TRADE COMMISSION OVERSIGHT.—Any covered person may, if it believes that the contents of an insert are false or misleading, submit the insert to the Federal Trade Commission for review. The Federal Trade Commission shall review the insert and make a determination promptly, but in no event later than 21 calendar days after receipt of the insert. The Federal Trade Commission may disapprove the insert for mailing if it finds that the insert is false or misleading, or contains information not permitted by this section.

(c) CONTENT OF STATUTORY INSERTS.—Each statutory insert required by this Act shall contain—

(1) a written statement of the following information:

''(A) The Financial Consumers Association is a financial services consumer membership organization established under Federal law to inform and represent financial services consumers.

''(B) The Association will work on behalf of financial services consumers to prevent corporate fraud, deceptive and criminal business practices, and to ensure the protection of retirement funds and investments.

''(C) The Association provides financial services consumers with information and advice on a range of consumer issues.

''(D) The Association also represents financial services consumers before regulatory agencies and legislative bodies.

''(E) The Association is a democratically controlled consumer membership organization.

''(F) Although the Association has been established under Federal law, as a consumer membership organization, the Association is primarily supported by membership fees, not public funds. Thus the Financial Consumers Association depends on its membership base for funding to undertake its information and representation activities.

''(G) Anyone who is 16 years of age or older may become a member of the Association by paying the annual membership fee. The amount of the annual membership fee shall be determined annually by the Association.

''(H) You may become a member simply by filling out the attached application and mailing it and the membership fee to the Financial Consumers Association in the attached pre-addressed envelope;'';

(2) an application for Association membership, which requests the name and address of the applicant, and indicates the annual membership fee; and

(3) a pre-addressed business reply envelope for mailing the application and membership fee to the Association.

(d) OTHER REQUIREMENTS APPLICABLE TO STATUTORY INSERTS.—With respect to a statutory insert required by this Act—

(1) the statement, application, and pre-addressed business reply envelope specified in this Act shall be presented to the customer as a single document (except that the document may be separable into different parts by tearing along perforated lines);

(2) the statement and application shall be printed in at least 10-point type; and

(3) the Association shall pay the cost of printing and placement of the statutory insert in all appropriate mailings, but shall not pay any postage costs if the insert weighs less than 0.35 ounces.

SEC. 1128. INTERIM BOARD.

(a) ESTABLISHMENT OF INTERIM BOARD.—Members of the interim board of directors of the Association shall be appointed not later than 6 months after the date of enactment of this Act, as follows:

(1) 3 members shall be appointed by the President of the United States.

(2) 3 members shall be appointed by the Speaker of the House of Representatives.

(3) 3 members shall be appointed by the President Pro Tempore of the Senate.

(4) 1 member shall be appointed by the Minority Leader of the House of Representatives.

(5) 1 member shall be appointed by the Minority Leader of the Senate.

(b) MEMBER CRITERIA.—Individuals considered for appointment to the interim board shall, to the extent possible, represent different regions of the United States, and represent categories of citizens' organizations including—

(1) consumer groups;

(2) organizations representing low-income persons;

(3) labor unions;

(4) civil rights groups;

(5) neighborhood groups; and

(6) elderly groups.

(c) ELIGIBILITY.—To qualify for nomination or appointment as an interim director of the Association representing a designated category of citizens' organizations, an individual shall be an active officer, employee, or member of a citizens' organization within such category or previously have been an officer or employee of 1 or more such citizens' organizations within such category for a cumulative period of at least 2 years.

(d) DUTIES OF INTERIM BOARD.—The interim board of directors of the Association shall—

(1) not later than 60 days after the date of appointment of all members, incorporate the Association under the laws of the District of Columbia, subject to the provisions and limitations of this Act;

(2) manage the affairs of the Association until the first elected board of directors takes office;

(3) inform the public of the existence, nature, and purpose of the Association, and encourage such persons to join the Association, participate in its activities, and contribute to the Association;

(4) adopt procedures and standards, consistent with the requirements of this Act, for

the nomination and election of the first elected board of directors of the Association;

(5) make all necessary preparations for the first election of the board of directors of the Association, oversee the election campaign, and tally the votes;

(6) conduct meetings of the interim board of directors at least once every 3 months;

(7) keep minutes, financial books, and records which shall reflect the acts and transactions of the interim board of directors; and

(8) employ such interim staff as the interim board of directors deem necessary to carry out their responsibilities under this Act.

(e) APPLICABILITY OF CERTAIN OTHER PROVISIONS OF THIS ACT.—Members of the interim board of directors shall be subject to the requirements of the applicable provisions of this Act.

(f) LIMITATION ON AUTHORITY TO APPEAR BEFORE OTHER BODIES.—The interim board of directors shall not engage in representation or intervention on behalf of financial services consumers, except to the extent necessary to maintain or exercise the powers granted and the duties imposed upon interim directors by this Act.

(g) CONDUCT FIRST GENERAL ELECTION.—

(1) IN GENERAL.—Once the membership of the Association reaches 50,000, or within 18 months of the date of the appointment of the last interim director, whichever occurs first, the interim board of directors shall set a date for the first general election of the board of directors, and shall promptly notify each member of the Association.

(2) TIMELY ELECTION REQUIREMENT.—The date set for the election shall be not more than 90 days after notification as provided in this Act.

(3) EXCEPTION.—Notwithstanding the provisions of this Act, no election shall be held in an election district unless there are at least 500 residents of any such district who are Association members.

SEC. 1129. DELEGATES.

(a) IN GENERAL.—Members of the Association shall have duly elected representatives who shall be elected in accordance with the provisions of this Act.

(b) ONE DELEGATE TO BE ELECTED FROM EACH DISTRICT.—1 delegate shall be elected by the Association members from each Association election district, except that an election shall not take place in an election district if there is no candidate who has satisfied the qualification requirements of this Act.

(c) ELECTION DISTRICTS.—

(1) IN GENERAL.—Each State of the United States shall be considered an Association election district. The District of Columbia shall also be considered an Association election district.

SEC. 1130. ELECTIONS OF DELEGATES.

(a) VOTING STANDARD.—Each member of the Association shall be entitled to cast 1 vote for a candidate for a delegate to represent such member's district. Voting shall be by secret mail ballot.

(b) ELIGIBILITY STANDARDS FOR NOMINATION AS A DELEGATE.—To qualify for nomination as a candidate for election as a delegate of the Association, an individual shall—

(1) be a member of the Association and a resident of the election district that such individual seeks to represent;

(2) submit to the Association, not less than 60 days and not more than 120 days before the election, a nomination petition signed by at least 25 Association members from the election district that such individual seeks to represent;

(3) submit to the Association the statements required by this Act; and

(4) satisfy all other requirements of this Act and any applicable bylaws of the Association.

(c) DISTRIBUTION OF ELECTION MATERIAL.—

(1) IN GENERAL.—The Association shall mail to each member the following documents concerning duly nominated candidates for election as a delegate:

(A) An official ballot listing all such candidates from the member's election district.

(B) The candidate's statement required by this Act for each such candidate from the member's election district.

(2) SUMMARY AND COSTS.—The delegate summaries shall have a uniform format and shall provide information on the same characteristics for each candidate. The costs for all mailings described in this Act shall be borne by the Association.

(d) LIMITATION ON CAMPAIGN EXPENDITURES.—No candidate for election as a delegate or director shall incur campaign expenditures for any such election in an amount greater than the amount determined by multiplying the number of members in the candidate's election district by 150 percent of the cost of postage for a 1-ounce 1st class mailing.

(e) LIMITATION ON USE OF CAMPAIGN CONTRIBUTIONS.—No candidate for election as a delegate or to the board of directors may use any campaign contribution for any purpose other than campaign expenditures. Any unused contributions shall be donated to the Association not later than 60 days after the election.

(f) LIMITATION ON AMOUNT OF CAMPAIGN CONTRIBUTIONS.—No candidate for election as a delegate shall accept more than $250 in campaign contributions from any one contributor in any election.

(g) PROHIBITION ON ACCEPTANCE OF CERTAIN CONTRIBUTIONS.—A candidate for election as a delegate may not accept political action committee contributions or other campaign contributions the board of directors determines to be unacceptable.

(h) DUTIES AND POWERS OF DELEGATES.—Each delegate shall have the following duties and powers:

(1) ANNUAL SURVEY.—To survey Association members in the delegate's election district at least 1 time each year to ascertain members' concerns using written surveys provided by the Association up to 50 percent of the survey questions in which may be provided by the delegate.

(2) LIAISON.—To act as a liaison between the board of directors and the members in the delegate's election district, including transmitting any comments, writings, and suggestions concerning the Association from members in the delegate's election district to the board of directors and informing such members of the board's response to their statements.

(3) OFFICE PLANNING.—To develop plans for the organization of regional and local offices.

(4) VOTING ON CHANGES IN ARTICLES OF INCORPORATION, BYLAWS, AND MAJOR POLICIES.—To vote at the annual meeting of delegates and at special meetings of delegates called by the board of directors on amendments to the bylaws or the articles of incorporation or on matters involving changes in major policies or operations of the Association.

(5) APPROVAL OF RULES.—To approve rules proposed by the board of directors for the nomination and election of the directors.

(6) VOTING AT ANNUAL AND SPECIAL MEETINGS.—To vote on other items submitted to delegates by the board of directors at annual and special meetings.

(7) OTHER DUTIES AND POWERS.—To carry out all other duties and exercise all other powers accorded to delegates under this Act.

(i) ANNUAL MEETINGS.—

(1) TIME AND PLACE.—An annual meeting of delegates shall be held in the month of July on a date and in a manner determined by the board of directors at least 6 months in advance of the meeting.

(2) PROCEDURES.—

(A) VOTING.—All delegates shall be eligible to attend, participate in, and vote in the annual meeting of delegates.

(B) QUORUM.—A majority of the delegates shall constitute a quorum.

(C) ONE PERSON; ONE VOTE.—Each delegate shall have 1 vote at such meetings.

(D) MAJORITY VOTE.—A majority vote of the delegates shall indicate approval by the delegates of any items submitted for the consideration of the delegates.

(E) ABSENTEE VOTING.—The first elected board of directors shall establish procedures for absentee voting.

(3) AGENDA.—Items may be placed on the meeting's agenda by any of the following methods:

(A) By request of any director or delegate not less than 5 days and not more than 4 months in advance of the date of such meeting.

(B) By petition which—

(i) contains the valid signatures of at least 5 percent of the members in any delegate's election district or at least 1 percent of the total membership; and

(ii) was filed with the board of directors not less than 5 days and not more than 4 months in advance of the date of such meeting.

(4) FORM OF MEETING.—The form of the annual meeting of delegates shall be as provided in the laws of the District of Columbia regarding nonprofit corporations.

(5) OPEN MEETINGS.—

(A) MEETINGS OPEN TO PUBLIC.—The annual meeting of delegates shall be open to the public.

(B) MEMBERS OPPORTUNITY TO BE HEARD.—Members shall be given a reasonable opportunity at any annual meeting to present any comment, criticism, or suggestion concerning the Association, but members may not vote at such meetings.

(6) MINUTES.—Complete minutes of each annual meeting shall be kept and shall be distributed to 1 Federal depository library in each election district.

(j) TERMS AND CONDITIONS OF OFFICE.—

(1) IN GENERAL.—The term of office for any delegate shall be 3 years.

(2) MAXIMUM NUMBER OF TERMS.—No delegate shall serve more than 2 terms.

(3) SERVICE WITHOUT PAY OTHER THAN REIMBURSEMENT FOR EXPENSES.—Delegates of the Association shall serve without compensation, except that delegates may be reimbursed for actual expenses incurred by them in the performance of their duties.

(k) VACANCY.—

(1) IN GENERAL.—If a vacancy occurs in any position of delegate, the board of directors shall appoint, as the successor for the balance of the term, the person who—

(A) meets the requirements specified in this Act; and

(B) had the highest vote total in the most recent delegate election from the district in which such vacancy occurred of all candidates (who meet the requirements specified in this Act) other than the candidate whose failure to continue to serve as delegate created the vacancy.

(2) ALTERNATIVE METHOD OF APPOINTMENT.—If any vacancy referred to in paragraph (1) cannot be filled in the manner described in such paragraph, the board of directors, by vote of not less than ⅔ of all directors, shall appoint within 60 days of the occurrence of the vacancy a successor from the same election district for the remainder of the current term. The person appointed by

the board of directors shall meet the qualifications for delegate.

(l) RECALL.—Any delegate shall be removed from office by the board of directors if not less than 40 percent of the members from the delegate's election district who voted in the last election have signed a petition for recall.

SEC. 1131. BOARD OF DIRECTORS.

(a) MANAGEMENT OF ASSOCIATION.—The affairs of the Association shall be managed by a board of directors, which shall be elected by the delegates of the Association in accordance with the provisions of this Act. The board of directors shall consist of 17 members. Twelve directors shall constitute a quorum.

(b) ONE PERSON; ONE VOTE.—Each director shall have one vote on the board of directors.

(c) TERMS OF OFFICE.—The term of office for a director shall be 3 years, except as provided otherwise in this Act, and no director shall serve more than 2 consecutive terms.

(d) POWERS AND DUTIES OF BOARD.—The board of directors, shall, in addition to its other responsibilities under this Act—

(1) conduct meetings of the board of directors at least once every 6 months, which shall be open to the public, unless the board of directors by a majority votes to adjourn into executive session;

(2) conduct an annual delegate meeting;

(3) limit matters discussed in executive session only to personnel actions, potential or pending civil or criminal proceedings involving the Association, and material which would result in an unwarranted invasion of personal privacy if discussed in open sessions;

(4) keep minutes, financial records, and other records which shall reflect the acts and transactions of the board of directors;

(5) cause the financial books of the Association to be audited by a qualified certified public accountant at least once each fiscal year;

(6) prepare quarterly statements and an annual report indicating the substantive activities and financial operations of the Association;

(7) approve the bylaws of the Association, consistent with the requirements of this Act;

(8) make available to the public and include on the Association's web page, documents prepared by or filed with the Association within the preceding 5 years, including—

(A) minutes of the board of directors meeting;

(B) director's or executive director's financial statements;

(C) candidates' financial statements; and

(D) candidates' personal statements; and

(9) conduct 4 mailings each year to the membership of the Association, to inform the membership about the work of the Association and to conduct the business of the Association.

(e) ELECTION OF OFFICERS.—At the first regular meeting of the board of directors at which a majority of its members are present, subsequent to the installation of new directors following each annual election, the board shall elect by majority vote of directors present and voting, and from among the directors, a president, a vice president, a secretary, and a treasurer. The board may also elect a comptroller and such other officers as it deems necessary.

(f) EXECUTIVE DIRECTOR OF ASSOCIATION.—

(1) IN GENERAL.—The board of directors shall hire and supervise an executive director for the Association.

(2) DUTIES OF EXECUTIVE DIRECTOR.—The executive director shall implement the policies established by the board of directors, employ and discharge Association employees, and manage the offices, facilities, and employees of the Association.

(3) ELIGIBILITY STANDARDS.—Any applicant for the position of executive director, and each executive director, shall satisfy the requirements for director eligibility established by this Act.

(4) TERM LIMIT.—The executive director shall only be eligible to serve as an employee of the Association for 6 consecutive years. After such 6-year term, the executive director shall be prohibited from serving as an agent, consultant, attorney, accountant, or subcontractor for the Association, and shall be ineligible to receive any monetary compensation from the Association.

(g) NO COMPENSATION FOR ASSOCIATION DIRECTORS.—A member of the board of directors of the Association may not receive any compensation for his or her services as a director, but shall be reimbursed for wages actually lost in an amount not to exceed $160 per day, and for necessary expenses including travel expenses incurred in the discharge of Association duties.

(h) BONDING REQUIREMENT FOR STAFF.—Any director or staff of the Association eligible to receive, handle, or disburse funds on behalf of the Association shall be bonded. The cost of such bonds shall be paid for by the Association.

(i) ANNUAL FINANCIAL STATEMENTS OF DIRECTORS.—Each director and the executive director of the Association shall file annually with the board of directors a director's financial statement, which shall include the same information required by this Act for members seeking election as delegates or directors of the Association.

(j) ANNUAL MEETINGS.—

(1) IN GENERAL.—An annual meeting of members of the Association shall be held in the month of July, on a date and at a place within the United States to be determined by the board of directors at least 6 months in advance of the meeting.

(2) AGENDA.—Items may be placed on the annual meeting agenda—

(A) by request of any director, not less than 10 days and not more than 4 months in advance of the date of such meeting; and

(B) by petition containing the valid signatures of at least 500 members of the Association, which petition shall be filed with the board of directors not less than 10 days and not more than 4 months in advance of the date of such meeting.

(3) NOTICE OF AGENDA.—The executive director shall present proposed agenda items to the membership through its regular mailings.

(4) PUBLIC MEETINGS.—The annual meeting of Association members shall be open to the public, except that seating preference shall be given to Association members. Association members shall be given a reasonable opportunity at such meetings to present comments, criticisms, and suggestions concerning the Association.

(5) MINUTES.—Complete minutes of the annual meetings shall be kept and distributed to all depository libraries in the United States and placed on the Association's webpage.

(k) VACANCY.—In the event that a board member position becomes vacant, the board of directors shall install the person having the highest vote total in the last election who was not elected to the board. If this is impossible, the board of directors, by vote of not less than ⅔ of all directors, shall appoint a successor within 60 days for the remainder of the current term. The person appointed by the board of directors shall meet all qualifications for board members.

(l) RECALL.—

(1) IN GENERAL.—Any director shall be removed from the board of directors by the board of directors if not fewer than 40 percent of the delegates or members of a director's election district who voted in the last election have signed a petition for recall.

(2) LIMITATIONS.—No petition to recall a director under paragraph (1) may be filed within 6 months of his or her election. An election pursuant to the filing of a recall petition shall be conducted in accordance with the provisions of this Act. A director recalled may become a candidate in the election triggered by the filing of the recall petition. The director recalled shall continue to serve until the installment in office of his or her successor, or until his or her reelection. The election triggered by the filing of a recall petition shall be conducted via one of the Association's quarterly mailings.

SEC. 1132. ELECTION OF DIRECTORS.

(a) ELECTION OF THE BOARD OF DIRECTORS.—

(1) REGULAR ELECTION PROCEDURES.—

(A) ONE DELEGATE; ONE VOTE.—Each delegate shall cast 1 vote for 1 candidate for the board of directors.

(B) TOP 17 CANDIDATES BECOME DIRECTORS.—The 17 candidates receiving the largest number of votes shall become the directors.

(2) RUNOFF ELECTION.—

(A) IN GENERAL.—In the event of a tie involving the 17th position on the board of directors, a runoff election shall be conducted.

(B) VOTING AND CANDIDATE ELIGIBILITY.—Any delegate may vote for 1 candidate in the runoff election, and only those nominees involved in the tie that included the 17th position shall be eligible for the runoff election.

(3) APPLICABILITY TO ALL BOARD ELECTIONS.—The requirements of this section shall apply to the first election of directors conducted by the interim board of directors pursuant to this Act, as well as to all subsequent elections.

SEC. 1133. QUALIFICATIONS.

(a) CANDIDATE'S STATEMENT.—Any person seeking nomination as a candidate for election to the board of directors of the Association shall file a candidate statement with the Association, not less than 60 days and not more than 120 days prior to the election. The contents of a candidate statement may not contain false statements, and the Association may, by bylaw or interim board of directors' procedure, impose a uniform limitation on the length of all candidate statements.

(b) FINANCIAL STATEMENT.—Any person seeking nomination as a candidate for election to the board of directors shall file with the Association, not less than 60 days and not more than 120 days prior to the election. Each candidate's financial statement shall include the following information for the candidate and the immediate family of the candidate:

(1) PRECEDING 5 YEARS' BUSINESS AND FINANCIAL RELATIONSHIPS.—A detailed list of any business or financial relationships during the preceding 5 years with any covered person or organization of covered persons, including any attorney, legislative agent, officer, or director relationship.

(2) CURRENT AND PRECEDING 5 YEARS' CORPORATE POSITIONS.—A list of all corporate and organizational directorships or other offices and all fiduciary relationships currently held or held at any time during the preceding 5 years.

(3) INVESTMENTS OF $1,000 OR MORE IN ANY FINANCIAL SERVICES CORPORATION.—A list of all financial services corporations in which the candidate holds securities worth $1,000 or more at current market value and the dollar value of each such holding.

(4) OTHER INFORMATION.—Such other information as the board of directors may require by bylaw.

(c) AFFIRMATION OF TRUTH OF STATEMENTS.—Each candidate for election as a delegate or director shall affirm in writing, that the information in such candidate's financial statement is true and complete and that the candidate has complied with all the campaign contribution and campaign expenditure requirements of this Act and any such bylaws of the Association. Each candidate shall furnish the board of directors with such information regarding campaign contributions and expenditures as the board may request.

(d) INELIGIBILITY OF INTERIM DIRECTORS AND STAFF DURING FIRST ELECTION.—No interim director shall be eligible for election as a delegate or director during the first election. The executive director and other Association staff persons, including interim staff persons, shall not be eligible for election as a delegate or director while serving as executive director or staff person, or for 1 year after such service is terminated.

(e) INELIGIBILITY OF DELEGATES AND DIRECTORS TO HOLD OTHER PUBLIC OFFICE.—No delegate or director shall hold any elective Federal, State, or local office or be a candidate for such office, or be appointed to hold such office, unless such appointee receives no compensation other than reimbursement of expenses.

(f) INELIGIBILITY OF OFFICERS, DIRECTORS, EMPLOYEES, AND SHAREHOLDERS OF COVERED PERSONS.—Any director, officer, or employee of a covered person, any person who owns common stock or other securities of covered persons in an aggregate amount in excess of $10,000, any agent, consultant, attorney, or accountant for a covered person, and any member of the immediate family of any such person shall be ineligible to be a delegate or a director.

(g) INELIGIBILITY OF OFFICERS AND EMPLOYEES OF FEDERAL OR STATE DEPOSITORY INSTITUTION REGULATORY AGENCIES.—No officer or employee of any State or Federal agency that regulates depository institutions or any member of the immediate family of any such officer or employee shall be eligible to be a delegate or a director.

(h) INELIGIBILITY OF OFFICERS AND EMPLOYEES OF AGENCIES.—No officer or employee of any Federal, State, or local agency that regulates any covered person shall be eligible to be a director of the Association.

SEC. 1134. BALLOT ISSUES.

(a) PROCEDURE FOR OBTAINING MEMBERSHIP VOTE ON ISSUES.—Issues may be placed on a ballot for vote by the general membership if—

(1) a majority of the board of directors votes to place an issue before the membership for vote;

(2) a petition is received by the board of directors which—

(A) contains the valid signatures of at least 1,000 members in any district or at least 1 percent of the total membership; and

(B) requests that an issue be placed on a ballot is received by the board of directors; or

(3) a majority of the delegates vote to place an issue before the membership for a vote.

(b) PROCEDURES FOR CONDUCTING VOTE ON ISSUES.—

(1) TIME FOR ELECTION.—Upon certification of a vote of the directors or delegates which meets the requirements of paragraph (1) or (3) of subsection (a) or the receipt of a petition which meets the requirement of subsection (a)(2), the board of directors shall place the issue on a special ballot and schedule a date for a vote on the issue to be held within 2 months after receipt of the certification or petition.

(2) MAIL BALLOT.—The board of directors shall send or have sent by mail to each member, not later than 30 days after receipt of a petition or certification pursuant to this section, an official ballot containing the issue for membership vote.

(3) VOTE CAST BY RETURN MAIL.—Each member may cast a vote regarding the ballot issue by returning the ballot, properly marked, to the head office of the Association by the date and time fixed for the balloting pursuant to this subsection.

(4) SECRET BALLOT.—Voting shall be by secret ballot.

(5) VOTE TALLY.—The board of directors shall tally votes with all reasonable speed and inform the membership and delegates promptly of the outcome of the vote.

SEC. 1135. ACCESS TO MEMBER MAILINGS.

No person may use any list of members of the Association, or any part of such list, for purposes other than the conduct of the business of the Association, as prescribed in this Act. The board of directors shall, however, develop criteria for providing Association member access through Association mailings to the Association's membership for Association purposes only. No person shall disclose any such list or part thereof to another person, unless there is substantial reason to believe that such list or part thereof is intended to be used for the lawful purposes described in this Act.

SEC. 1136. PROHIBITED ACTS.

(a) COVERED PERSONS.—No covered person or officer, employee, or agent of any covered person may interfere or threaten to interfere with or cause any interference with the provision of financial services of, or penalize or threaten to penalize or cause to be penalized, any person who contributes to the Association or participates in any of its activities, in retribution for such contribution or participation.

(b) GENERAL PROHIBITION.—No person may act with intent to prevent, interfere with, or hinder the activities permitted under this subtitle.

SEC. 1137. PENALTIES.

A violation of any provision of this subtitle by a covered person or officer, employee, or agent thereof or of the Association shall be subject to a civil penalty of not more than $10,000 for each violation, to be levied by the Federal Trade Commission.

SEC. 1138. ADMINISTRATIVE ENFORCEMENT.

Compliance with the provisions of this subtitle shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Federal Trade Commission has under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

SEC. 1139. DISSOLUTION OF THE ASSOCIATION.

If, after the end of the 3-year period beginning on the date on which the Association is incorporated, the Association's membership remains below 25,000 members during any 1-year period, the board of directors of the Association shall dissolve the Association. Upon the termination, dissolution, or winding up of the Association in any manner or for any reason, voluntary or involuntary, its assets, if any, remaining after the payment or provision for payment of all liabilities of the Association shall be distributed to, and only to, 1 or more charitable organizations. No part of the income or assets of the Association shall inure to any of its members, directors, or officers, or be distributed to any such person during the life of the Association or upon its dissolution, except in payment of a legal obligation owed to such person. At the time of dissolution, any unexpended funds appropriated by Congress for the establishment of the Association shall be returned to the United States Treasury.

SEC. 1140. REPORTS.

(a) REPORT TO THE PRESIDENT AND CONGRESS.—

(1) IN GENERAL.—The Association shall prepare and submit to the President and the appropriate committees of Congress, at the beginning of each regular session of Congress, a report on the Association's activities for the preceding fiscal year.

(2) REPORT CONTENT.—The reports required by this subsection shall include—

(A) an appraisal of the performance of Federal financial regulatory agencies, including reports on the compliance of Federal financial regulatory agencies with their legal missions and mandates;

(B) the extent to which regulatory agencies should disseminate specified information to the research and consumer communities and consumer information to the public;

(C) an appraisal of significant actions of State and local governments relating to the protection of financial consumers;

(D) recommendations for financial consumer protection legislation; and

(E) an overview of covered persons' compliance with the law.

SEC. 1141. RELATIONSHIP TO EXISTING LAW.

Nothing in this Act shall be construed to limit the right of any individual or group of individuals to initiate, intervene in, or otherwise participate in any proceeding before a regulatory agency or court, nor to relieve any regulatory agency, court, or other public body of any obligation, or affect its discretion to permit intervention or participation by a consumer or group or class of consumers or citizens in any proceeding or activity.

SEC. 1142. CONSTRUCTION.

The provisions of this Act shall be construed in such a manner as best to enable the Association to effectively represent and protect the interests of financial services consumers.

SEC. 1143. SEVERABILITY.

If any provision of this Act shall be declared invalid, the other provisions of this Act shall remain in effect.

SA 3773. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1059, strike line 22 and all that follows through page 1061, line 7, and insert the following:

''(b) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—

''(1) IN GENERAL.—Any compensation consultant, legal counsel, or other adviser to the compensation committee of an issuer shall be independent.

''(2) RULES.—The Commission shall, by rule, define the term 'independent' for purposes of this subsection.

SA 3774. Mr. LEMIEUX submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to

protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1036, strike line 14 and all that follows through page 1041, line 3, and insert the following:

SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 7(b)(1)(E)(i), by striking ''credit rating entities, and other private economic'' and insert ''private economic, credit,'';

(2) in section 28(d)—

(A) in the subsection heading, by striking ''NOT OF INVESTMENT GRADE'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation'';

(C) in paragraph (2), by striking ''not of investment grade'';

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as paragraph (3); and

(F) in paragraph (3), as so redesignated—

(i) by striking subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (B), as so redesignated, by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation''; and

(3) in section 28(e)—

(A) in the subsection heading, by striking ''NOT OF INVESTMENT GRADE'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation''; and

(C) in paragraphs (2) and (3), by striking ''not of investment grade'' each place that it appears and inserting ''that does not meet standards of credit-worthiness established by the Corporation''.

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended by striking ''that is a nationally registered statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking ''is rated investment grade by not less than 1 nationally registered statistical rating organization'' and inserting ''meets such standards of credit-worthiness as the Commission shall adopt''.

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking ''any applicable rating'' and inserting ''standards of credit-worthiness established by the Comptroller of the Currency'';

(2) in the heading for subsection (a)(3) by striking ''RATING OR COMPARABLE REQUIREMENT'' and inserting ''REQUIREMENT'';

(3) subsection (a)(3), by amending subparagraph (A) to read as follows:

''(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.''.

(4) in the heading for subsection (f), by striking ''MAINTAIN PUBLIC RATING OR'' and inserting ''MEET STANDARDS OF CREDIT-WORTHINESS''; and

(5) in subsection (f)(1), by striking ''any applicable rating'' and inserting ''standards of credit-worthiness established by the Comptroller of the Currency''.

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking ''is rated in one of the two highest rating categories by at least one nationally registered statistical rating organization'' and inserting ''meets standards of credit-worthiness as established by the Commission''; and

(2) in paragraph (53)(A), by striking ''is rated in 1 of the 4 highest rating categories by at least 1 nationally registered statistical rating organization'' and inserting ''meets standards of credit-worthiness as established by the Commission''.

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking ''credit rating'' and inserting ''credit-worthiness''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

(1) IN GENERAL.—Commission shall undertake a study on the feasability and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.

SA 3775. Mr. WYDEN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

TITLE _____—ELIMINATING SECRET SENATE HOLDS

SEC. _____. ELIMINATING SECRET SENATE HOLDS.

Rule VII of the Standing Rules of the Senate is amended by adding at the end the following:

''7. (a) The majority and minority leaders of the Senate or their designees shall recognize a notice of intent of a Senator who is a member of their caucus to object to proceeding to a measure or matter only if the Senator—

''(1) submits the notice of intent in writing to the appropriate leader or their designee and grants in the notice permission for the leader or designee to object in the Senator's name; and

''(2) not later than 2 session days after the submission under clause (1), submits for inclusion in the Congressional Record and in the applicable calendar section described in subparagraph (b) the following notice:

'' 'I, Senator _____, intend to object to proceeding to _____, dated _____.'

''(b) The Secretary of the Senate shall maintain for both the Senate Calendar of Business and the Senate Executive Calendar a separate section entitled 'Notices of Intent to Object to Proceeding'. Each section shall include the name of each Senator filing a notice under subparagraph (a)(2), the measure or matter covered by the calendar that the Senator objects to, and the date the objection was filed.

''(c) A Senator may have an item relating to that Senator removed from a calendar to which it was added under subparagraph (b) by submitting for inclusion in the Congressional Record the following notice:

'' 'I, Senator _____, do not object to proceeding to _____, dated _____.'.''.

SA 3776. Mr. SPECTER (for himself, Mr. REED, Mr. KAUFMAN, Mr. DURBIN, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. MENENDEZ, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. FEINGOLD, and Mr. MERKLEY) 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 1004, between lines 11 and 12, insert the following:

SEC. 929D. PRIVATE CIVIL ACTION FOR AIDING AND ABETTING.

Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended—

(1) in the subsection heading, by striking ''PROSECUTION OF'' and inserting ''ACTIONS AGAINST'';

(2) by striking ''For purposes'' and inserting the following:

''(1) ACTIONS BROUGHT BY COMMISSION.—For purposes''; and

(3) by adding at the end the following:

''(2) PRIVATE CIVIL ACTIONS.—For purposes of any private civil action implied under this title, any person that knowingly provides substantial assistance to another person in violation of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of this title to the same extent as the person to whom such assistance is provided. For purposes of this

paragraph, a person acts knowingly only if the person has actual knowledge of the conduct underlying the violation described in the preceding sentence.''.

SA 3777. 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 1187, between lines 9 and 10, insert the following:

Subtitle K—Multifamily Mortgage Resolution

SEC. 992. MULTIFAMILY MORTGAGE RESOLUTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development shall establish a program to protect tenants and at-risk multifamily properties, which may include—

(1) creating sustainable financing of such properties, taking into consideration—

(A) the rental income generated by such properties; and

(B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and local government subsidies for such properties that exists on the day before the date of enactment of this Act;

(3) providing funds for rehabilitation of such properties;

(4) facilitating the transfer of such properties to responsible persons, when appropriate and with the agreement of the owners of the property; and

(5) ensuring affordability of such properties.

(b) COORDINATION.—In carrying out the program established under this section, the Secretary of Housing and Urban Development may coordinate with the Secretary, the Corporation, the Board of Governors, the Federal Housing Finance Agency, and any other agency of the Federal Government that the Secretary of Housing and Urban Development considers appropriate.

(c) DEFINITION.—For purposes of this section, the term ''multifamily property'' means a residential structure that consists of 5 or more dwelling units.

SA 3778. Mr. UDALL of Colorado (for himself, Mr. LUGAR, Mr. BOND, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. LEVIN, Mr. LIEBERMAN, Mrs. MCCASKILL, and Mrs. SHAHEEN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1078. REPEAL OF CREDIT SCORE DISCLOSURE FEES.

(a) REPEAL OF CREDIT SCORE DISCLOSURE FEES.—Section 609(f)(8) of the Fair Credit Reporting Act (15 U.S.C. 1681g(f)(8)) is amended to read as follows:

''(8) FREE ANNUAL CREDIT SCORE.—

''(A) IN GENERAL.—Section 612(a) shall apply to each consumer reporting agency described in subsection (p) of section 603 in making disclosures pursuant to this subsection.

''(B) REASONABLE FEES.—Other than with respect to a free annual disclosure, as provided in subparagraph (A) and section 612(a), a consumer reporting agency may charge a fair and reasonable fee, as determined by the Commission, for providing the information required under this subsection.''.

(b) APPLICABILITY OF FCRA.—Section 612(a) of the Fair Credit Reporting Act (15 U.S.C. 1681j(a)) shall apply to each consumer reporting agency described in subsection (p) of section 603 in making disclosures pursuant to this section.

SA 3779. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, strike line 5 and all that follows through page 1291, line 9, and insert the following:

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) STUDY AND REPORT.—Not later than 180 days after the date of enactment of this Act, the Bureau shall conduct a study and submit a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau determines that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The determination of the Bureau under this subsection shall be consistent with the study conducted under subsection (a).

(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

SA 3780. Mr. FEINGOLD 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 1455, after line 25, insert the following:

SEC. 1077. MANDATORY PREDISPUTE ARBITRATION RULEMAKING.

(a) SECTION 921.—Section 921 of this Act is amended to read as follows:

''SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.

''(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 918, is amended by adding at the end the following:

'' '(i) AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.—The Commission shall—

'' '(1) conduct a rulemaking on the use of agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between such customers or clients and such broker, dealer, or municipal securities dealer that arises under the securities laws or the rules of a self-regulatory organization; and

'' '(2) if the Commission finds that prohibition of, or imposition of conditions or limitations on, the use of agreements described in paragraph (1) is in the public interest and for the protection of investors, promulgate rules or regulations to establish such prohibitions, conditions, or limitations.'.

''(b) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following:

'' '(f) AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.—The Commission shall—

'' '(1) conduct a rulemaking on the use of agreements that require customers or clients of any investment adviser to arbitrate any dispute between such customers or clients and such investment adviser that arises under the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or the rules of a self-regulatory organization; and

'' '(2) if the Commission finds that prohibition of, or imposition of conditions or limitations on, the use of agreements described in paragraph (1) is in the public interest and for the protection of investors, promulgate rules or regulations to establish such prohibitions, conditions, or limitations.'.''

(b) SECTION 1028.—Section 1028 of this Act is amended to read as follows:

''SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.

''(a) AUTHORITY.—The Bureau, by regulation, shall prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers.

''(b) LIMITATION.—The authority described in subsection (a) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.''.

SA 3781. Ms. COLLINS submitted an amendment intended to be proposed by her 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 XII—PROHIBITION ON TAXPAYER FUNDED BAILOUTS

SEC. 1301. PROHIBITION ON TAXPAYER FUNDED BAILOUTS.

No taxpayer funds shall be provided under this or any other Act to provide pecuniary or monetary assistance to any company for the purpose of minimizing losses or otherwise mitigating the financial distress of such company.

SA 3782. Mr. CORKER (for himself, Mr. ENZI and Mrs. HUTCHISON) 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 1045, strike line 12 and all that follows through page 1052, line 2 and insert the following:

''(b) STUDY ON RISK RETENTION.—

''(1) STUDY.—

''(A) IN GENERAL.—The Federal Reserve Board, in coordination and consultation with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, and the Securities and Exchange 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 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 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).''.

SA 3783. Mr. CORKER (for himself, Mr. ENZI, Mr. ISAKSON, Mr. CHAMBLISS, and Mr. BARRASSO) 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 61, after line 24, insert the following:

SEC. 122. ASSET BUBBLE STUDY.

(a) FEASABILITY STUDY.—

(1) IN GENERAL.—The Board of Governors, the Office of the Comptroller Currency, the Corporation, and the Department of Housing and Urban Development, in consultation with the Council, shall conduct a study on the feasibility and advisability of establishing quantitative criteria for identifying housing bubbles.

(2) REQUIRED INCLUSIONS.—The study required under paragraph (1) shall examine whether or not the quantitative criteria that may be established should include following information:

(A) Consumer confidence.

(B) Inventory data.

(C) Housing appreciation.

(D) Housing supply.

(E) Foreclosure statistics.

(F) Any other factor or information deemed relevant by the Board of Governors, the Office of the Comptroller Currency, the Corporation, and the Department of Housing and Urban Development, in consultation with the Council.

(3) ADDITIONAL EXAMINATIONS.—In conducting the study required under this subsection, the Board of Governors, the Office of the Comptroller Currency, the Corporation, and the Department of Housing and Urban Development, in consultation with the Council, shall also examine the advisability of using such quantitative criteria as a trigger for increased down payment requirements on home mortgage loans for lending institutions.

(4) CONSIDERATIONS.—In conducting the study required under this subsection, the Board of Governors, the Office of the Comptroller Currency, the Corporation, and the Department of Housing and Urban Development, in consultation with the Council, shall consider the mortgage finance systems in other countries, including the legal and regulatory regimes present and in effect in such countries, the experience of such countries with housing bubbles and housing crises, and the relevance, if any, of the down payment requirements in effect in such countries to the occurrence or onset of such bubbles or crises.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Board of Governors, the Office of the Comptroller Currency, the Corporation, and the Department of Housing and Urban Development, in consultation with the Council, shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a joint report summarizing the results of the study required under subsection (a).

SA 3784. Mr. CORKER (for himself, Mr. CHAMBLISS, Mr. ISAKSON, and Mr. GREGG) 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 30, between lines 11 and 12, insert the following:

(N) review and submit comments to the Commission and any standards setting body with respect to an accounting principle, standard, or procedure in effect on the date of enactment of this Act or that is proposed; and

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NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Wednesday, May 19, 2010, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the proposed Constitution of the U.S. Virgin Islands; S. 2941, the Republic of the Marshall Islands Supplemental Nuclear Compensation Act of 2010; H.R. 3940, an act to amend Public Law 96–597 to clarify the authority of the Secretary of the Interior to extend grants and other assistance to facilitate political status public education programs for the peoples of the non-self-governing territories of the United States; and H.R. 2499, the Puerto Rico Democracy Act of 2010.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by e-mail to Rosemarie__Calabro @energy.senate.gov.

For further information, please contact Allen Stayman or Rosemarie Calabro.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SCHUMER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, May 5, 2010, at 10 a.m., to hear testimony on ''Voting By Mail: An Examination of State and Local Experiences.''

For further information regarding this meeting, please contact Lynden

(b) PURPOSE.—The purpose of the program is to make grants to participating States solely for the implementation of online voter registration systems.

(c) LIMITATION ON USE OF FUNDS.—In no case may grants made under this section be used to reimburse a State for costs incurred in implementing online voter registration systems at the State or local government level if such costs were incurred prior to October 1, 2009.

(d) APPLICATION.—A State seeking to participate in the program under this section shall submit an application to the Election Assistance Commission containing such information, and at such time, as the Election Assistance Commission may specify.

(e) AMOUNT AND AWARDING OF IMPLEMENTATION GRANTS; DURATION OF PROGRAM.—

(1) AMOUNT OF IMPLEMENTATION GRANTS.—

(A) IN GENERAL.—The amount of an implementation grant made to a participating State shall be $150,000.

(B) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An implementation grant made to a participating State under this section shall be available to the State without fiscal year limitation.

(2) AWARDING OF IMPLEMENTATION GRANTS.—

(A) IN GENERAL.—The Election Assistance Commission shall award implementation grants during each year in which the program is conducted.

(B) ONE GRANT PER STATE.—The Election Assistance Commission shall not award more than 1 implementation grant to any participating State under this section over the duration of the program.

(3) DURATION.—The program shall be conducted for a period of 5 years.

(f) REQUIREMENTS.—A participating State shall establish and implement an online voter registration system which individuals may use to register to vote, update voter registration information, and request an absentee ballot in the State.

(g) BEST PRACTICES, TECHNICAL ASSISTANCE, AND REPORTS.—

(1) IN GENERAL.—The Election Assistance Commission shall—

(A) develop, periodically issue, and, as appropriate, update best practices for implementing online voter registration systems;

(B) provide technical assistance to participating States for the purpose of implementing online voter registration systems; and

(C) submit to the appropriate committees of Congress—

(i) annual reports on the implementation of such online voter registration systems by participating States during each year in which the program is conducted; and

(ii) upon completion of the program conducted under this section, a final report on the program, together with recommendations for such legislation or administrative action as the Election Assistance Commission determines to be appropriate.

(2) CONSULTATION.—In developing, issuing, and updating best practices, developing materials to provide technical assistance to participating States, and developing the annual and final reports under paragraph (1), the Election Assistance Commission shall consult with interested parties, including—

(A) State and local election officials; and

(B) voting rights groups, voter protection groups, groups representing the disabled, and other civil rights or community organizations.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) GRANTS.—There are authorized to be appropriated to award grants under this section, for each of fiscal years 2010 through 2016, $1,800,000, to remain available without fiscal year limitation until expended.

(2) ADMINISTRATION.—There are authorized to be appropriated to administer the program under this section, $200,000 for the period of fiscal years 2010 through 2016, to remain available without fiscal year limitation until expended.

(i) RULE OF CONSTRUCTION.—Nothing in this Act may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

(1) The Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.).

(2) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(3) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).

(4) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(5) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).

(6) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 513—DESIGNATING JULY 9, 2010, AS ''COLLECTOR CAR APPRECIATION DAY'' AND RECOGNIZING THAT THE COLLECTION AND RESTORATION OF HISTORIC AND CLASSIC CARS IS AN IMPORTANT PART OF PRESERVING THE TECHNOLOGICAL ACHIEVEMENTS AND CULTURAL HERITAGE OF THE UNITED STATES

Mr. TESTER (for himself and Mr. BURR) submitted the following resolution; which was considered and agreed to:

S. RES. 513

Whereas many people in the United States maintain classic automobiles as a pastime and do so with great passion and as a means of individual expression;

Whereas the Senate recognizes the effect that the more than 100-year history of the automobile has had on the economic progress of the Nation and supports wholeheartedly all activities involved in the restoration and exhibition of classic automobiles;

Whereas collection, restoration, and preservation of automobiles is an activity shared across generations and across all segments of society;

Whereas thousands of local car clubs and related businesses have been instrumental in preserving a historic part of the heritage of this Nation by encouraging the restoration and exhibition of such vintage works of art;

Whereas automotive restoration provides well-paying, high-skilled jobs for people in all 50 States; and

Whereas automobiles have provided the inspiration for music, photography, cinema, fashion, and other artistic pursuits that have become part of the popular culture of the United States: Now therefore, be it

Resolved, That the Senate—

(1) designates July 9, 2010, as ''Collector Car Appreciation Day'';

(2) recognizes that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States;

(3) encourages the Department of Education, the Department of Transportation, and other Federal agencies to support events and commemorations of ''Collector Car Appreciation Day'', including exhibitions and educational and cultural activities for young people; and

(4) encourages the people of the United States to engage in events and commemorations of ''Collector Car Appreciation Day'' that create opportunities for collector car owners to educate young people on the importance of preserving the cultural heritage of the United States, including through the collection and restoration of collector cars.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3785. Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. DEMINT, Mr. CRAPO, Mr. BENNETT, 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.

SA 3786. Ms. CANTWELL (for herself, Mr. WHITEHOUSE, and Mr. SANDERS) 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 3787. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3788. 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 3789. Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 3790. Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 3791. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3792. Mrs. BOXER 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 3793. Mrs. MCCASKILL submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3794. Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, 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 3795. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3796. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3797. Mr. SCHUMER (for himself, Mr. REED, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3798. Mrs. HAGAN 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 3799. Mrs. HAGAN (for herself, Mrs. HUTCHISON, Mr. CARPER, Mr. CORNYN, 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 3800. 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 3801. Mr. HATCH (for himself, Mr. ENZI, 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 3802. 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 3803. 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 3804. 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 3805. Mrs. BOXER 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 3806. Mr. SPECTER (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 3807. Mrs. HAGAN (for herself 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 3808. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and 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 3809. Mr. INOUYE (for himself, Mr. COCHRAN, Mr. DURBIN, Ms. COLLINS, Mr. BYRD, Mr. HARKIN, and Mr. VOINOVICH) 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 3810. Mr. DORGAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3811. Mr. DORGAN (for himself, Mr. FEINGOLD, 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 3812. Mr. HARKIN (for himself, Mr. SCHUMER, and Mr. SANDERS) 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 3813. Ms. KLOBUCHAR (for herself and Mr. BENNET) 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 3814. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3785. Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. DEMINT, Mr. CRAPO, Mr. BENNETT, 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 1090, between lines 18 and 19, add the following:

SEC. 974. EXEMPTION FOR SMALLER ISSUERS UNDER THE SARBANES-OXLEY ACT OF 2002.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) is amended—

(1) in subsection (b), by striking ''With respect'' and inserting ''Except as provided in subsection (c), with respect''; and

(2) by adding at the end the following:

''(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer for which the aggregate worldwide market value of the voting and nonvoting common equity held by persons that are not affiliates of the issuer is less than $150,000,000.''.

(b) STUDY AND REPORT.—

(1) STUDY.—The Chief Economist of the Commission shall conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) for companies for which the aggregate worldwide market value of the voting and nonvoting common equity held by persons that are not affiliates of the issuer is $150,000,000 or more, and not more than $700,000,000, while maintaining investor protections for such companies.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Chief Economist of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under paragraph (1) that includes—

(A) an analysis of the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262);

(B) an analysis of whether reducing the compliance burden for companies described in paragraph (1) or providing a complete exemption from compliance with such section 404(b) for such companies would encourage the companies to list on exchanges in the United States in the initial public offerings of such companies or otherwise facilitate capital formation; and

(C) recommendations about whether the exemption under section 404(c) Sarbanes-Oxley Act of 2002, a added by subsection (a), should be extended to larger issuers.

SA 3786. Ms. CANTWELL (for herself, Mr. WHITEHOUSE, and Mr. SANDERS) 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 762, between lines 5 and 6, insert the following:

SEC. _____. ANTIMARKET MANIPULATION AUTHORITY.

(a) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:

''(c) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—

''(1) PROHIBITION AGAINST MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.

''(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING.—Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact, that such report is false, misleading or inaccurate.

''(B) EFFECT ON OTHER LAW.—Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).

''(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

''(3) ENFORCEMENT.—

''(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

''(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

''(i) contain a description of the charges against the person that is the subject of the complaint; and

''(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

''(C) HEARING.—A hearing described in subparagraph (B)(ii)—

''(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);

''(ii) shall require the person to show cause regarding why—

''(I) an order should not be made—

''(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

''(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

''(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

''(iii) may be held before—

''(I) the Commission; or

''(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

''(4) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (6)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

''(5) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

''(6) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

''(7) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

''(8) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

''(9) EVIDENCE.—On the receipt of evidence under paragraph (3)(C)(iii), the Commission may—

''(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

''(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

''(C) assess such person—

''(i) a civil penalty of not more than an amount equal to the greater of—

''(I) $140,000; or

''(II) triple the monetary gain to such person for each such violation; or

''(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of—

''(I) $1,000,000; or

''(II) triple the monetary gain to the person for each such violation; and

''(D) require restitution to customers of damages proximately caused by violations of the person.

''(10) ORDERS.—

''(A) NOTICE.—The Commission shall provide to a person described in paragraph (9) and the appropriate governing board of the registered entity notice of the order described in paragraph (9) by—

''(i) registered mail;

''(ii) certified mail; or

''(iii) personal delivery.

''(B) REVIEW.—

''(i) IN GENERAL.—A person described in paragraph (9) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

''(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

''(I) for the circuit in which the petitioner carries out the business of the petitioner; or

''(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

''(C) PROCEDURE.—

''(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

''(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

''(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) shall have jurisdiction to affirm, set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.''.

(b) CEASE AND DESIST ORDERS, FINES.—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:

''(d) If any person (other than a registered entity), directly or indirectly, is using or employing, or attempting to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of $140,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): Provided, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c). Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.''.

(c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—Section 22(a)(1) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)) is amended by striking subparagraph (D) and inserting the following:

''(D) who purchased or sold a contract referred to in subparagraph (B) hereof if the violation constitutes the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission

shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.

SA 3787. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 497, strike line 9 and all that follows through page 500, line 15, and insert the following:

SEC. 620. CONCENTRATION LIMITS FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.

(a) DEPOSIT CONCENTRATION LIMIT.—

(1) AMENDMENT.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by striking subsection (f) and inserting the following:

''(f) NATIONWIDE CONCENTRATION LIMITS.—

''(1) CONCENTRATION LIMIT ESTABLISHED.—No single bank holding company may control more than 10 percent of the total amount of deposits of all insured depository institutions in the United States.

''(2) SALE OR TRANSFER REQUIRED.—The Board shall require any bank holding company that the Board determines is in violation of paragraph (1) to sell or otherwise transfer assets to an unaffiliated company, to the extent that the Board determines is necessary to bring the company into compliance with paragraph (1).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

(b) SIZE REQUIREMENTS FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—

(1) AMENDMENT.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. LIMITS ON NONDEPOSIT LIABILITIES FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) FDIC-ASSESSED DEPOSITS.—The term 'FDIC-assessed deposits' means the assessment base of a bank holding company, as calculated under part 327 of title 12 Code of Federal Regulations, or any successor thereto.

''(2) FINANCIAL COMPANY.—The term 'financial company' means any nonbank financial company supervised by the Board.

''(3) NONBANK FINANCIAL COMPANY DEFINITIONS.—The terms 'foreign nonbank financial company', 'nonbank financial company', and 'U.S. nonbank financial company' have the same meanings as in section 102 of the Restoring American Financial Stability Act of 2010.

''(4) NON-DEPOSIT LIABILITIES.—The term 'non-deposit liabilities' means—

''(A) with respect to a bank holding company—

''(i) the total assets of the banking holding company; minus

''(ii) the sum of—

''(I) the tier 1 capital of the bank holding company, taking into account any off-balance-sheet liabilities; and

''(II) the FDIC-assessed deposits of the bank holding company; and

''(B) with respect to a financial company—

''(i) the total assets of the financial company; minus

''(ii) the tier 1 capital of the financial company, taking into account any off-balance-sheet liabilities.

''(5) INCORPORATED TERMS.—The terms 'average total consolidated assets' and 'tier 1 capital' have the meanings given those terms in part 225 of title 12, Code of Federal Regulations, or any successor thereto.

''(b) LIMIT ON NONDEPOSIT LIABILITIES FOR BANK HOLDING COMPANIES.—

''(1) LIMITS FOR BANK HOLDING COMPANIES.—No bank holding company may control nondeposit liabilities that exceed 2 percent of the annual gross domestic product of the United States.

''(2) LIMITS FOR FINANCIAL COMPANIES.—No financial company may control nondeposit liabilities that exceed 3 percent of the annual gross domestic product of the United States.

''(3) DETERMINATION OF GROSS DOMESTIC PRODUCT.—For purposes of this subsection, the annual gross domestic product of the United States shall be determined using the average of the annual gross domestic product of the United States, as calculated by the Bureau of Economic Analysis of the Department of Commerce, during the 16 calendar quarters most recently completed at the time of the determination under paragraph (1).

''(4) TREATMENT OF INSURANCE COMPANIES.—

''(A) IN GENERAL.—Notwithstanding the limits under paragraphs (1) and (2), the Board may establish a separate liability limit for a bank holding company or financial company that the Board determines is primarily engaged in the business of insurance, if the Board determines that such a limit is necessary in order to provide for consistent and equitable treatment of the bank holding company or financial company.

''(B) CONSULTATION.—In establishing a liability limit under subparagraph (A), the Board shall consult with the State insurance regulator for any bank holding company or financial company described in subparagraph (A) having a subsidiary that is regulated by a State insurance regulator.

''(5) TREATMENT OF FOREIGN DEPOSITS.—The Board may exclude from the calculation of nondeposit liabilities under this subsection any foreign or other deposits that are not FDIC-assessed deposits, if the Board determines that such action is necessary to ensure the consistent and equitable treatment of institutions with international operations.

''(c) PROMPT CORRECTIVE ACTION.—

''(1) AUTHORITIES.—The Board shall require a bank holding company or financial company that violates subsection (a) to comply with the limit under subsection (a) by—

''(A) selling or otherwise transferring assets or off-balance-sheet items to unaffiliated firms;

''(B) terminating 1 or more activities of the bank holding company or financial company; or

''(C) imposing conditions on the manner in which the bank holding company or financial company conducts an activity of the bank holding company or financial company.

''(2) CORRECTIVE ACTION PLAN.—Not later than 60 days after the Board determines that a bank holding company or financial holding company has violated subsection (a), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a plan detailing the manner by which the bank holding company or financial company will be brought into compliance with subsection (a).

''(3) REPORTS TO CONGRESS.—

''(A) WRITTEN REPORTS.—At the end of each 60-day period following the date on which the Board submits a plan under paragraph (1) during which a bank holding company or financial company remains in violation of subsection (a), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the compliance of the bank holding company or financial holding company with the plan.

''(B) TESTIMONY.—At the end of each 120-day period following the date on which the Board submits a plan under paragraph (1) during which a bank holding company or financial company remains in violation of subsection (a), the Board shall testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives with respect to the compliance of the bank holding company or financial holding company with the plan.

''SEC. 14. CAPITAL ASSESSMENT PROGRAM.

''(a) ANNUAL CAPITAL ASSESSMENT REQUIRED.—Not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, and annually thereafter, the Board shall conduct a capital assessment of each bank holding company and financial company, to estimate the losses, revenues, and reserve needs for the bank holding company or financial company.

''(b) REPORT.—The Board shall submit an annual report on the results of the capital assessments under subsection (a) to the Secretary of the Treasury, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 3 years after the date of enactment of this Act.

SA 3788. 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 ''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 _____—DISCOUNT PRICING CONSUMER PROTECTION ACT

SEC. _____. DISCOUNT PRICING CONSUMER PROTECTION ACT.

(a) SHORT TITLE.—This section may be cited as the ''Discount Pricing Consumer Protection Act''.

(b) PROHIBITION ON VERTICAL PRICE FIXING.—

(1) AMENDMENT TO THE SHERMAN ACT.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by adding after the first sentence the following: ''Any contract, combination, conspiracy or agreement setting a minimum price below which a product or service cannot be sold by a retailer, wholesaler, or distributor shall violate this Act.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 90 days after the date of enactment of this Act.

SA 3789. Mr. BROWNBACK (for himself and Mr. BOND) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title X, add the following:

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

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

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential mortgages; or

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

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

(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to a third-party finance or leasing source.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of law, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

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

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person or resident in the United States, or any territory of the United States, who is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

SA 3790. Mr. BROWNBACK (for himself and Mr. BOND) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title X, add the following:

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

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

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential mortgages; or

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

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

(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to a third-party finance or leasing source.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of law, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

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

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person resident in the United States or any territory of the United States, licensed by a State, a territory of the United States, or the District of Columbia, to engage in the sale of motor vehicles.

SA 3791. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, 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 1565, after line 23, add the following:

TITLE XIII—CONGO CONFLICT MINERALS

SEC. 1301. DISCLOSURE TO SECURITIES AND EXCHANGE COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by section 763 of this Act, is further amended by adding at the end the following new subsection:

''(o) DISCLOSURES TO COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Commission shall promulgate rules requiring any person described in paragraph (2)—

''(A) to disclose annually to the Commission in a report—

''(i) whether the columbite-tantalite, cassiterite, gold, or wolframite that was necessary as described in paragraph (2)(A)(ii) in the year for which such report is submitted originated or may have originated in the Democratic Republic of Congo or an adjoining country; and

''(ii) a description of the measures taken by the person, which may include an independent audit, to exercise due diligence on the source and chain of custody of such columbite-tantalite, cassiterite, gold, or wolframite, or derivatives of such minerals, in order to ensure that the activities of such person that involve such minerals or derivatives did not directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or an adjoining country; and

''(B) make the information disclosed under subparagraph (A) available to the public on the Internet website of the person.

''(2) PERSON DESCRIBED.—

''(A) IN GENERAL.—A person is described in this paragraph if—

''(i) the person is required to file reports to the Commission under subsection (a)(2); and

''(ii) columbite-tantalite, cassiterite, gold, or wolframite is necessary to the functionality or production of a product of such person.

''(B) DERIVATIVES.—For purposes of this paragraph, if a derivative of a mineral is necessary to the functionality or production of a product of a person, such mineral shall also be considered material to the functionality or production of a product of the person.

''(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President determines that such revision or waiver is in the public interest.

''(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall terminate on the date that is 5 years after the date of the enactment of this subsection.

''(B) EXTENSION BY SECRETARY OF STATE.—The date described in subparagraph (A) shall be extended by 1 year for each year in which the Secretary of State certifies that armed parties to the ongoing armed conflict in the Democratic Republic of Congo or adjoining countries continue to be directly involved and benefitting from commercial activity involving columbite-tantalite, cassiterite, gold, or wolframite.

''(5) ADJOINING COUNTRY DEFINED.—In this subsection, the term 'adjoining country', with respect to the Democratic Republic of Congo, means a country that shares an internationally recognized border with the Democratic Republic of Congo.''.

SEC. 1302. REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that includes the following:

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1301, in promoting peace and security in the eastern Democratic Republic of Congo.

(2) A description of the problems, if any, encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(o).

(3) A description of the adverse impacts of carrying out the provisions of such section 13(o), if any, on communities in the eastern Democratic Republic of Congo.

(4) Recommendations for legislative or regulatory actions that can be taken—

(A) to improve the effectiveness of the provisions of such section 13(o) to promote peace and security in the eastern Democratic Republic of Congo;

(B) to resolve the problems described pursuant to paragraph (2), if any; and

(C) to mitigate the adverse impacts described pursuant paragraph (3), if any.

SA 3792. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII, add the following:

Subtitle C—Fiduciary Duty

SEC. 781. SECURITIES EXCHANGE ACT.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by this Act, is further amended by inserting after section 10D, the following:

''SEC. 10E. FIDUCIARY DUTY.

''(a) IN GENERAL.—Each financial services provider shall be subject to a fiduciary duty, the obligations of which shall depend upon the particular facts and circumstances, to any covered client with respect to any individualized advice or individualized recommendation provided, directly or indirectly, to such client in connection with any transaction involving the purchase or sale of—

''(1) a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(2) any CEA-regulated financial instrument; or

''(3) any financial instrument, the value of which is derived from a security, CEA-regulated financial instrument, or other financial instrument.

''(b) ENFORCEMENT.—This section shall be enforced—

''(1) as to persons who are subject to the jurisdiction of a Federal functional regulator—

''(A) by that regulator in Federal courts;

''(B) by the office of the Attorney General of the United States in Federal courts; or

''(C) by State attorneys general or State administrative agencies in State courts; and

''(2) as to persons who are not described in paragraph (1)—

''(A) by the Securities and Exchange Commission or the Commodity Futures Trading Commission in Federal courts;

''(B) by the office of the Attorney General of the United States in Federal courts; or

''(C) by State attorneys general or State administrative agencies in State courts.

''(c) AUTHORITY TO DEFINE DUTY.—As to persons who are subject to the jurisdiction of a Federal functional regulator, that regulator may, by rule, define and clarify the fiduciary duty referred to in subsection (a) with respect to such persons.

''(d) LIMITATION.—The fiduciary duty referred to in subsection (a) shall not apply to advice that is subject to the fiduciary duty under section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) in connection with a relationship that is subject to that section.

''(e) DEFINITIONS.—For purposes of this section—

''(1) the term 'financial services provider' means any person who, for compensation, is in the business of providing advice regarding, creating, underwriting, buying, selling, effecting transactions in or dealing in the financial instruments described in subparagraphs (1), (2), or (3) of subsection (a);

''(2) the term 'individualized' means any advice or recommendation that reflects the particular needs or circumstances of the covered client to which it is provided;

''(3) the term 'covered client' means—

''(A) any pension plan as defined in section 3(2)(A) of the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1002(2)(A));

''(B) any employee benefit plan described under paragraph (1) or (3) of section 4(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(1), (3)); and

''(C) any State and any county, municipality, political subdivision, agency or instrumentality of a State and any Federal agency or instrumentality thereof;

''(4) the term 'CEA-regulated financial instrument' means any financial instrument regulated by the Commodity Futures Trading Commission or under the Commodity Exchange Act (7 U.S.C. 1 et seq.); and

''(5) the term 'Federal functional regulator' means—

''(A) the Board of Governors of the Federal Reserve System;

''(B) the Office of the Comptroller of the Currency;

''(C) the Board of Directors of the Federal Deposit Insurance Corporation;

''(D) the National Credit Union Administration;

''(E) the Securities and Exchange Commission;

''(F) the Commodity Futures Trading Commission;

''(G) the Director of the Federal Housing Finance Agency; and

''(H) the Bureau of Consumer Financial Protection.''.

SEC. 782. COMMODITY EXCHANGE ACT.

Section 6b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by adding at the end the following:

''(e) FIDUCIARY DUTY.—

''(1) IN GENERAL.—A financial services provider shall be subject to a fiduciary duty, the obligations of which shall depend upon the particular facts and circumstances, to any covered client with respect to any individualized advice or individualized recommendation provided, directly or indirectly, to such client in connection with any transaction involving the purchase or sale of—

''(A) a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(B) any CEA-regulated financial instrument; or

''(C) any financial instrument the value of which is derived from a security, CEA-regulated financial instrument, or other financial instrument.

''(2) ENFORCEMENT.—This section shall be enforced—

''(A) as to persons who are subject to the jurisdiction of a Federal functional regulator—

''(i) by that regulator in Federal courts;

''(ii) by the office the Attorney General of the United States in Federal courts; or

''(iii) by State attorneys general or State administrative agencies in State courts; and

''(B) as to other persons—

''(i) by the Securities and Exchange Commission or the Commodity Futures Trading Commission in Federal courts;

''(ii) by the office the Attorney General of the United State in Federal courts; or

''(iii) by State attorneys general or State administrative agencies in State courts.

''(3) AUTHORITY TO DEFINE DUTY.—As to persons who are subject to the jurisdiction of a Federal functional regulator, that regulator may, by rule, define and clarify the fiduciary duty referred to in paragraph (1) with respect to such persons.

''(4) LIMITATION.—The fiduciary duty referred to in paragraph (1) shall not apply to advice that is subject to the fiduciary duty under section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) in connection with a relationship that is subject to that section.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'financial services provider' means any person who, for compensation, engages in the business of providing advice regarding, creating, underwriting, buying, selling, effecting transactions in or dealing in the financial instruments described in subparagraphs (A), (B), or (C) of paragraph (1);

''(B) the term 'individualized' means any advice or recommendation that reflects the particular needs or circumstances of the covered client to which it is provided;

''(C) the term 'covered client' means—

''(i) any pension plan as defined in section 3(2)(A) of the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1002(2)(A));

''(ii) any employee benefit plan described under paragraph (1) or (3) of section 4(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(1), (3)); and

''(iii) any State and any county, municipality, political subdivision, agency or instrumentality of a State and any Federal agency or instrumentality thereof;

''(D) the term 'CEA-regulated financial instrument' means any financial instrument regulated by the Commission or under this Act; and

''(E) the term 'Federal functional regulator' means—

''(i) the Board of Governors of the Federal Reserve System;

''(ii) the Office of the Comptroller of the Currency;

''(iii) the Board of Directors of the Federal Deposit Insurance Corporation;

''(iv) the National Credit Union Administration;

''(v) the Securities and Exchange Commission;

''(vi) the Commodity Futures Trading Commission;

''(vii) the Director of the Federal Housing Finance Agency; and

''(viii) the Bureau of Consumer Financial Protection.''.

SA 3793. Mrs. MCCASKILL submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 122. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(h) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(h))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) COUNCIL OF INSPECTORS GENERAL WORKING GROUPS.—

(A) WORKING GROUPS TO EVALUATE COUNCIL.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—A Council of Inspectors General Working Group established under this subparagraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this subparagraph.

(B) WORKING GROUPS FOR FINANCIAL COMPANIES UNDERGOING RESOLUTION.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General shall convene a Council of Inspectors General Working Group for each financial company for which the Federal Deposit Insurance Corporation is appointed as receiver under section 202.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—Not later than 270 days after the appointment of the Federal Deposit Insurance Corporation as receiver for the financial company for which a Council of Inspectors General Working Group is convened under clause (i), such Working Group shall submit to the primary financial regulatory agency and to Congress a report that includes—

(I) the reasons for such financial company's failure;

(II) the reasons for the appointment of the Federal Deposit Insurance Corporation as receiver for such financial company; and

(III) recommendations for preventing future failures of financial companies.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 3794. Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, 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. ____. FINANCIAL FRAUD PROVISIONS.

(a) SENTENCING GUIDELINES.—

(1) SECURITIES FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements, and appropriately account for the potential and actual harm to the public and the financial markets from the offenses.

(B) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(2) FINANCIAL INSTITUTION FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements and to ensure a term of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.

(B) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(b) EXTENSION OF STATUTE OF LIMITATIONS FOR SECURITIES FRAUD VIOLATIONS.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3301. Securities fraud offenses

''(a) DEFINITION.—In this section, the term 'securities fraud offense' means a violation of, or a conspiracy or an attempt to violate—

''(1) section 1348;

''(2) section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a));

''(3) section 24 of the Securities Act of 1933 (15 U.S.C. 77x);

''(4) section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17);

''(5) section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48); or

''(6) section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy).

''(b) LIMITATION.—No person shall be prosecuted, tried, or punished for a securities fraud offense, unless the indictment is found or the information is instituted within 6 years after the commission of the offense.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3301. Securities fraud offenses.''.

(c) FALSE CLAIMS AND INTERNATIONAL MONEY LAUNDERING.—

(1) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.—Section 3730(h) of title 31, United States Code, is amended—

(A) in paragraph (1), by striking ''or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter'' and inserting ''agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter''; and

(B) by adding at the end the following:

''(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.''.

(2) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO AWARDS TO QUI TAM PLAINTIFFS.—Section 3730(d)(1) of title 31, United States Code, is amended, in the second sentence, by striking ''in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media,'' and inserting ''in a Federal criminal, civil or administrative hearing in which the Government or its agent is a party, in a congressional, Government Accountability Office, or other Federal audit, report, hearing or investigation, or in the news media,''.

(3) APPLICATION OF THE INTERNATIONAL MONEY LAUNDERING STATUTE TO TAX EVASION.—Section 1956(a)(2)(A) of title 18, United States Code, is amended by—

(A) inserting ''(i)'' before ''with the intent to promote''; and

(B) adding at the end the following:

''(ii) with the intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or''.

(d) PROMOTING CRIMINAL ACCOUNTABILITY.—

(1) DEFINITIONS.—In this subsection—

(A) the terms ''Bureau'' and ''Federal consumer financial law'' have the meanings given those terms in section 1002; and

(B) the term ''civil investigative demand'' has the meaning given that term in section 1051.

(2) REVIEW OF CIVIL INVESTIGATIVE DEMANDS BY ATTORNEY GENERAL.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Bureau may not issue a civil investigative demand unless—

(i) the Bureau consults with the Attorney General of the United States regarding the civil investigative demand; and

(ii) the Attorney General determines that issuing the civil investigative demand would be consistent with the guidelines issued under subparagraph (C).

(B) PERIOD FOR REVIEW.—If the Attorney General has not made a determination described in subparagraph (A)(ii) as of the date that is 45 days after the date on which the Attorney General receives a request to issue a civil investigative demand, the Attorney General shall be deemed to have determined that issuing the civil investigative demand would be consistent with the guidelines issued under subparagraph (C).

(C) GUIDELINES.—

(i) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Bureau, shall promulgate guidelines for parallel proceedings involving the Federal consumer financial laws.

(ii) CONSIDERATIONS.—In promulgating guidelines under this subparagraph, the Attorney General and the Bureau shall consider—

(I) the significant deterrent and punitive effects of criminal sanctions;

(II) the ability to use a criminal conviction as collateral estoppel in a subsequent civil case;

(III) the possibility that the imposition of civil penalties might undermine a prosecution or the severity of a subsequent criminal sentence;

(IV) preservation of the secrecy of a criminal investigation, including the use of covert investigative techniques;

(V) prevention of the premature discovery of evidence by a defendant in a criminal case through the exploitation by the defendant of the civil discovery process;

(VI) avoidance of unnecessary litigation issues, such as unfounded defense claims of misuse of process in a civil or criminal action; and

(VII) avoidance of duplicative interviews of witnesses and subjects.

SA 3795. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. USE OF CREDIT CHECKS PROHIBITED FOR EMPLOYMENT PURPOSES.

(a) PROHIBITION FOR EMPLOYMENT AND ADVERSE ACTION.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended—

(1) in subsection (a)(3)(B), by inserting ''within the restrictions set forth in subsection (b)'' after ''purposes'';

(2) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively; and

(3) by inserting after subsection (a) the following new subsection:

''(b) USE OF CERTAIN CONSUMER REPORT PROHIBITED FOR EMPLOYMENT PURPOSES OR ADVERSE ACTIONS.—

''(1) GENERAL PROHIBITION.—Except as provided in paragraph (3), a person, including a prospective employer or current employer, may not use a consumer report or investigative consumer report, or cause a consumer report or investigative consumer report to be procured, with respect to any consumer where any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity—

''(A) for employment purposes; or

''(B) for making an adverse action, as described in section 603(k)(1)(B)(ii).

''(2) SOURCE OF CONSUMER REPORT IRRELEVANT.—The prohibition described in paragraph (1) shall apply even if the consumer consents or otherwise authorizes the procurement or use of a consumer report for employment purposes or in connection with an adverse action with respect to such consumer.

''(3) EXCEPTIONS.—Notwithstanding the prohibitions set forth in this subsection, and consistent with the other provisions of this title, an employer may use a consumer report with respect to a consumer in any case in which —

''(A) the consumer applies for, or currently holds, employment that requires national security or Federal Deposit Insurance Corporation clearance;

''(B) the consumer applies for, or currently holds, employment with a State or local government agency which otherwise requires use of a consumer report;

''(C) the consumer applies for, or currently holds, any management position or other position involving the handling or supervision of, or access to, customer funds or accounts at a financial institution (including any credit union); and

''(D) use of the consumer report with respect to the consumer is otherwise required by law.

''(4) EFFECT ON DISCLOSURE AND NOTIFICATION REQUIREMENTS.—The exceptions described in paragraph (3) shall have no effect on the other requirements of this title, including requirements in regards to disclosure and notification to a consumer when permissibly using a consumer report for employment purposes or for taking an adverse action with respect to such consumer.''.

(b) CONFORMING AMENDMENTS AND CROSS REFERENCES.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) in subsection (d)(3), by striking ''604(g)(3)'' and inserting ''604(h)(3)''; and

(B) in subsection (o), by striking ''A'' and inserting ''Subject to the restrictions set forth in section 604(b), a'';

(2) in section 604 (15 U.S.C. 1681b)—

(A) in subsection (a), by striking ''subsection (c)'' and inserting ''subsection (d)'';

(B) in subsection (c), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (2)(A), by inserting ''and subject to the restrictions set forth in subsection (b)'' after ''subparagraph (B)''; and

(ii) in paragraph (3)(A), by inserting ''and subject to the restrictions set forth in subsection (b)'' after ''subparagraph (B)'';

(C) in subsection (d)(1), as redesignated by subsection (a)(2) of this section, by striking ''subsection (e)'' in both places it appears and inserting ''subsection (f)'';

(D) in subsection (f), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (1), by striking ''subsection (c)(1)(B)'' and inserting ''subsection (d)(1)(B)''; and

(ii) in paragraph (5), by striking ''subsection (c)(1)(B)'' and inserting ''subsection (d)(1)(B)'';

(3) in section 607(e)(3)(A) (15 U.S.C. 1681e(e)(3)(A)), by striking ''604(b)(4)(E)(i)'' and inserting ''604(c)(4)(E)(i)'';

(4) in section 609 (15 U.S.C. 1681g)—

(A) in subsection (a)(3)(C)(i), by striking ''604(b)(4)(E)(i)'' and inserting ''604(c)(4)(E)(i)''; and

(B) in subsection (a)(3)(C)(ii), by striking ''604(b)(4)(A)'' and inserting ''604(c)(4)(A)'';

(5) in section 613(a) (15 U.S.C. 1681k(a)), by striking ''section 604(b)(4)(A)'' and inserting ''section 604(c)(4)(A)''; and

(6) in section 615 (15 U.S.C. 1681m)—

(A) in subsection (d)(1), by striking ''section 604(c)(1)(B)'' and inserting ''section 604(d)(1)(B)'';

(B) in subsection (d)(1)(E), by striking ''section 604(e)'' and inserting ''section 604(f)''; and

(C) in subsection (d)(2)(A), by striking ''section 604(e)'' and inserting ''section 604(f)''.

SA 3796. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. STUDY AND REPORT ON PAYDAY LENDING.

(a) STUDY REQUIRED.—The research unit established by the director under section 1013 shall conduct a study on the ability of the unemployed to access credit under reasonable terms, including an analysis of—

(1) the effects of the practice of ''payday lending'' on the unemployed;

(2) the potential impacts, both positive and negative, of using Federal or State unemployment benefit checks as collateral for obtaining a payday loan;

(3) alternative credit options for the unemployed, including the accessibility and costs associated with such options; and

(4) such other considerations as are determined to be relevant.

(b) REPORT TO THE BUREAU.—Not later than 1 year after the date of enactment of this Act, the research unit established under section 1013 shall—

(1) provide to the Bureau a report on the results of the study conducted under subsection (a), together with recommendations to help the unemployed to access credit on reasonable terms; and

(2) shall make such report available to the public.

SA 3797. Mr. SCHUMER (for himself, Mr. REED, and Mr. AKAKA,) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1248, strike line 22 and all that follows through page 1249, line 10 and insert the following:

(1) COVERED PERSONS.—This section shall apply to any covered person who is not a person described in section 1025(a) or 1026(a).

On page 1255, line 5, strike ''(A) IN GENERAL.—The Bureau'' and insert the following:

''(A) NOTICE.—If the Federal Trade Commission is authorized to enforce any Federal consumer financial law described in paragraph (1), either the Bureau or the Federal Trade Commission shall serve written notice to the other of the intent to take any enforcement action, prior to initiating such an enforcement action, except that if the Bureau or the Federal Trade Commission, in filing the action, determines that prior notice is not feasible, the Bureau or the Federal Trade Commission may provide notice immediately upon initiating such enforcement action.

''(B) COORDINATION.—The Bureau''.

On page 1255, line 10, strike ''(1)(A)''.

On page 1255, line 19, strike ''(B)'' and insert ''(C)''.

On page 1256, line 15, strike ''(C)'' and insert ''(D)''.

On page 1256, line 19, strike ''(D)'' and insert ''(E)''.

On page 1255, line 10, strike ''(1)(A)''.

SA 3798. Mrs. HAGAN 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, line 12, strike ''or other'' and insert '', appropriate representatives of State banking regulators, as such representatives are to be designated by a selection process determined by the State banking regulators, and other''.

On page 1249, line 13, after ''Commission'' insert ''and appropriate representatives of State banking regulators, as such representatives are to be designated by a selection process determined by the State banking regulators,''.

On page 1251, line 17, after ''authorities,'' insert ''including any formal committee established by State regulators to coordinate multi-state examinations or enforcement efforts for a class of covered persons,''.

SA 3799. Mrs. HAGAN (for herself, Mrs. HUTCHISON, Mr. CARPER, Mr. CORNYN, 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 485, line 14, strike ''and'' and all that follows through line 25 and insert the following:

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

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SA 3800. 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 94, between lines 4 and 5, insert the following:

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

SA 3801. Mr. HATCH (for himself, Mr. ENZI, 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:

At the end of title XII, insert the following:

TITLE XIII—TREATMENT OF FANNIE MAE AND FREDDIE MAC

SEC. 1301. PLAN ON REFORMING FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury, the Director of the Federal Housing Finance Agency, and the Secretary of Housing and Urban Development shall propose and submit to Congress a plan to end the conservatorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and to reform such entities.

(b) REQUIREMENTS.—The plan required under subsection (a) shall be drafted so as to

have the least amount of impact as possible on—

(1) the provision of affordable housing to underserved areas; and

(2) the cost to the taxpayer.

SA 3802. 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 124, line 9, insert after the semicolon, ''and''

''(ii) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to enhance their effectiveness in liquidating and reorganizing financial companies, including whether provisions relating to qualified financial contracts should be modified.''

SA 3803. 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 278 line 23, strike ''$50,000,000,000'' and insert ''$150,000,000,000''.

On page 284, between lines 10 and 11, insert the following:

''(15) LIMITATION ON USE OF FUND.—Notwithstanding any other provision of law, amounts in the Orderly Liquidation Fund may not be used under any circumstances to 'bail out' or maintain the solvency of any covered institution.''.

SA 3804. 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:

At the end of subtitle A of title I, add the following:

SEC. 122. ENHANCED DISCLOSURES.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(n) ENHANCED DISCLOSURES REQUIRED.—

''(1) IN GENERAL.—The Commission shall, by rule, with respect to each issuer that is subject to enhanced standards under title I of the Restoring American Financial Stability Act of 2010, and that is required to file periodic reports with the Commission, and any other issuers that the Commission determines appropriate—

''(A) require each such issuer to provide, together with its annual reports to the Commission, a detailed written description of all off balance sheet activities of the issuer and a detailed justification for not putting each of those activities on the balance sheet; and

''(B) pursuant to its authority under section 13 and 15(d), require each such issuer to disclose in each quarterly and annual filings required by the rules of the Commission—

''(i) the total liabilities of the issuer as of period end and total assets as of period end;

''(ii) the average daily liabilities during the measured period and average daily assets during the measured period;

''(iii) any short term borrowings, including separately presenting securities sold under agreements to repurchase, shown as of the end of the period and as a daily average during the period;

''(iv) a period end leverage ratio, measured as total equity capital as of period end, divided by total assets as of period end;

''(v) an average daily leverage ratio, measured as average daily equity capital during the measured period, divided by average daily assets during the measured period; and

''(vi) any other leverage or liquidity ratios that the Commission determines, by rule, to be appropriate.

''(2) TRANSACTIONS AFFECTING FUTURE LIQUIDITY.—The Commission shall issue rules requiring the disclosure of information on transactions that were accounted for as sales by the issuer, but have implications for future liquidity.

''(3) GRAPHIC REPRESENTATIONS AUTHORIZED.—The disclosures under this subsection may include a graphic representation of the information required to be disclosed.''.

SA 3805. Mrs. BOXER 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 1435, line 19, strike ''(g)''and insert the following:

''(g) PROHIBITION ON STEERING INCENTIVES.—

''(1) IN GENERAL.—For any loan secured by real property or a dwelling, the total amount of direct and indirect compensation from any source permitted to a mortgage originator may not vary based on the terms or conditions of the loan.

''(2) LIMITATIONS ON FINANCING OF ORIGINATION FEES AND COSTS.—

''(A) IN GENERAL.—For any loan secured by real property or a dwelling, a mortgage 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 mortgage originator.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), a mortgage originator may arrange for a consumer to finance an origination fee or cost through the rate, if—

''(i) the mortgage originator receives no other compensation, however denominated, directly or indirectly, from the consumer or any other person;

''(ii) the loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated;

''(iii) the loan does not contain a prepayment penalty;

''(iv) the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where the term 'points and fees' has the same meaning as in section 103(aa)(4);

''(v) the loan does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Federal banking agencies; and

''(vi) there is no other conflict of interest between the mortgage originator and the consumer.

''(3) MORTGAGE ORIGINATOR.—As used in this subsection, the term 'mortgage originator'—

''(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

''(i) takes a residential mortgage loan application;

''(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

''(iii) offers or negotiates terms of a residential mortgage loan;

''(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

''(C) does not include any person who is—

''(i) not otherwise described in subparagraph (A) or (B), and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph; or

''(ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A), and who does not advise a consumer on loan terms (including rates, fees, and other costs);

''(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated for performing such brokerage activities by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

''(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 1 property in any 36-month period, provided that such loan—

''(i) is fully amortizing;

''(ii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

''(iii) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

''(iv) meets any other criteria that the Federal banking agencies may prescribe; and

''(F) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan

for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

''(h)''.

SA 3806. Mr. SPECTER (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:

At the end of title IV, insert the following:

SEC. _____. FIDUCIARY STANDARD OF CARE FOR BROKER-DEALERS.

Section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is amended by inserting at the end the following:

''(3)(A)(i) A registered broker or dealer, or any agent, employee or other person acting on behalf of such a broker or dealer, that provides investment advice regarding the purchase or sale of a security or a security based swap, or solicits or offers to enter into, or enters into a purchase or sale of a security or a security-based swap, shall have a fiduciary duty to act in the best interests of the investor and to disclose the specific facts relating to any actual or reasonably anticipated conflict of interest relating to that security or transaction or contemplated transaction.

''(ii) The Commission may adopt rules and regulations to define the full scope and application of the duty referred to in clause (i), to grant exceptions, and to adopt safe harbors, if and to the extent the Commission finds that such additional rules, regulations, exceptions, and safe harbors are necessary or appropriate as in the public interest or for the protection of investors.

''(B)(i) It shall be unlawful for any person subject to a fiduciary duty under subparagraph (A) to effect, directly or indirectly, by the use of any instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, any transaction in, or to induce or attempt to induce, the purchase or sale of any security or security-based swap, if in connection with such purchase or sale, or attempted purchase or sale, such person willfully violates that duty or disclosure obligation.

''(ii) Any person who violates clause (i) shall be fined under title 18, United States Code, or imprisoned not more than 25 years, or both.''.

SA 3807. Mrs. HAGAN (for herself 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 486, strike lines 1 through 12, and insert the following:

(3) the term ''sponsoring or investing'', when used with respect to a hedge fund or private equity fund—

(A) means—

(i) serving as a general partner, managing member, or trustee of the fund;

(ii) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(iii) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

(B) includes any activity that would cause the aggregate investment of an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, in hedge funds and private equity funds to exceed 10 percent of the total Tier 1 capital (as that term is defined in section 2(o) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)) of the institution, company, or subsidiary; and

(C) except as provided in subparagraph (B), does not include any activity described under this paragraph—

(i) that is conducted in connection with, or in facilitation of, customer relationships or on behalf of unaffiliated customers;

(ii) that is related to investing a de minimis amount, as determined by the Council, in any hedge fund or private equity fund, not to exceed 10 percent of the total equity of any such fund; and

(iii) for which the obligations of any hedge or private equity funds are not guaranteed, directly or indirectly, by any affiliate.

On page 490, strike line 9 and all that follows through page 491, line 10.

SA 3808. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and Mr. 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 1006, line 7, strike ''Such inaccuracy'' and all that follows through line 9, and insert the following: ''Such inaccuracy necessitates changes in the way initial credit ratings are assigned.''.

On page 1042, strike lines 17 through 24, and insert the following:

(a) STUDY.—Not later than 1 year after the Credit Rating Agency Board, as established under section 15E(w) of the Securities Exchange Act of 1934, begins to assign nationally recognized statistical rating organizations to provide initial credit ratings, the Comptroller General of the United States shall conduct a study on the effectiveness of the implementation of the changes made to that section by section 939D of this Act, including the selection method by which the Credit Rating Agency Board assigns nationally recognized statistical rating organizations to provide initial credit ratings.

On page 1044, between lines 2 and 3, insert the following:

SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this Act, is amended by adding at the end the following:

''(w) INITIAL CREDIT RATING ASSIGNMENTS.—

''(1) DEFINITIONS.—In this subsection the following definitions shall apply:

''(A) BOARD.—The term 'Board' means the Credit Rating Agency Board established under paragraph (2).

''(B) QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'qualified nationally recognized statistical rating organization', with respect to a category of structured finance products, means a nationally recognized statistical rating organization that the Commission determines, under paragraph (3)(B), to be qualified to issue credit ratings with respect to such category.

''(C) REGULATIONS.—

''(i) CATEGORY OF STRUCTURED FINANCE PRODUCTS.—

''(I) IN GENERAL.—The term 'category of structured finance products'—

''(aa) shall include any asset backed security and any structured product based on an asset-backed security; and

''(bb) shall be further defined and expanded by the Commission, by rule, as necessary.

''(II) CONSIDERATIONS.—In issuing the regulations required subclause (I), the Commission shall consider—

''(aa) the types of issuers that issue structured finance products;

''(bb) the types of investors who purchase structured finance products;

''(cc) the different categories of structured finance products according to—

''(AA) the types of capital flow and legal structure used;

''(BB) the types of underlying products used; and

''(CC) the types of terms used in debt securities;

''(dd) the different values of debt securities; and

''(ee) the different numbers of units of debt securities that are issued together.

''(ii) REASONABLE FEE.—The Board shall issue regulations to define the term 'reasonable fee'.

''(2) CREDIT RATING AGENCY BOARD.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall—

''(i) establish the Credit Rating Agency Board, which shall be a self-regulatory organization;

''(ii) subject to subparagraph (C), select the initial members of the Board; and

''(iii) establish a schedule to ensure that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings not later than 1 year after the selection of the members of the Board.

''(B) SCHEDULE.—The schedule established under subparagraph (A)(iii) shall prescribe when—

''(i) the Board will conduct a study of the securitization and ratings process and provide recommendations to the Commission;

''(ii) the Commission will issue rules and regulations under this section;

''(iii) the Board may issue rules under this subsection; and

''(iv) the Board will—

''(I) begin accepting applications to select qualified national recognized statistical rating organizations; and

''(II) begin assigning qualified national recognized statistical rating organizations to provide initial ratings.

''(C) MEMBERSHIP.—

''(i) IN GENERAL.—The Board shall initially be composed of an odd number of members selected from the industry, with the total numerical membership of the Board to be determined by the Commission.

''(ii) SPECIFICATIONS.—Of the members initially selected to serve on the Board—

''(I) not less than a majority of the members shall be representatives of the investor industry, including both institutional and retail investors who do not represent issuers;

''(II) not less than 1 member should be a representative of the issuer industry;

''(III) not less than 1 member should be a representative of the credit rating agency industry; and

''(IV) not less than 1 member should be an independent member.

''(iii) TERMS.—Initial members shall be appointed by the Commission for a term of 4 years.

''(iv) NOMINATION AND ELECTION OF MEMBERS.—

''(I) IN GENERAL.—Prior to the expiration of the terms of office of the initial members, the Commission shall establish fair procedures for the nomination and election of future members of the Board.

''(II) MODIFICATIONS OF THE BOARD.—Prior to the expiration of the terms of office of the initial members, the Commission—

''(aa) may increase the size of the board to a larger odd number and adjust the length of future terms; and

''(bb) shall retain the composition of members described in clause (ii).

''(v) RESPONSIBILITIES OF MEMBERS.—Members shall perform, at a minimum, the duties described in this subsection.

''(vi) RULEMAKING AUTHORITY.—The Commission shall, if it determines necessary and appropriate, issue further rules and regulations on the composition of the membership of the Board and the responsibilities of the members.

''(D) OTHER AUTHORITIES OF THE BOARD.—The Board shall have the authority to levy fees from qualified nationally recognized statistical rating organization applicants, and periodically from qualified nationally recognized statistical rating organizations as necessary to fund expenses of the Board.

''(E) REGULATION.—The Commission has the authority to regulate the activities of the Board, and issue any further regulations of the Board it deems necessary, not in contravention with the intent of this section.

''(3) BOARD SELECTION OF QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—

''(A) APPLICATION.—

''(i) IN GENERAL.—A nationally recognized statistical rating organization may submit an application to the Board, in such form and manner as the Board may require, to become a qualified nationally recognized statistical rating organization with respect to a category of structured financial products.

''(ii) CONTENTS.—An application submitted under clause (i) shall contain—

''(I) information regarding the institutional and technical capacity of the nationally recognized statistical rating organization to issue credit ratings;

''(II) information on whether the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section; and

''(III) any additional information the Board may require.

''(iii) REJECTION OF APPLICATIONS.—The Board may reject an application submitted under this paragraph if the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section.

''(B) SELECTION.—The Board shall select qualified national recognized statistical rating organizations with respect to each category of structured finance products from among nationally recognized statistical rating organizations that submit applications under subparagraph (A).

''(C) RETENTION OF STATUS AND OBLIGATIONS AFTER SELECTION.—An entity selected as a qualified nationally recognized statistical rating organization shall retain its status and obligations under the law as a nationally recognized statistical rating organization, and nothing in this subsection grants authority to the Commission or the Board to exempt qualified nationally recognized statistical rating organizations from obligations or requirements otherwise imposed by Federal law on nationally recognized statistical rating organizations

''(4) REQUESTING AN INITIAL CREDIT RATING.—An issuer that seeks an initial credit rating for a structured finance product—

''(A) may not request an initial credit rating from a nationally recognized statistical rating organization; and

''(B) shall submit a request for an initial credit rating to the Board, in such form and manner as the Board may prescribe.

''(5) ASSIGNMENT OF RATING DUTIES.—

''(A) IN GENERAL.—For each request received by the Board under paragraph (4)(B), the Board shall select a qualified nationally recognized statistical rating organization to provide the initial credit rating to the issuer.

''(B) METHOD OF SELECTION.—

''(i) IN GENERAL.—The Board shall—

''(I) evaluate a number of selection methods, including a lottery or rotating assignment system, incorporating the factors described in clause (ii), to reduce the conflicts of interest that exist under the issuer-pays model; and

''(II) prescribe and publish the selection method to be used under subparagraph (A).

''(ii) CONSIDERATION.—In evaluating a selection method described in clause (i)(I), the Board shall consider—

''(I) the information submitted by the qualified nationally recognized statistical rating organization under paragraph (3)(A)(ii) regarding the institutional and technical capacity of the qualified nationally recognized statistical rating organization to issue credit ratings;

''(II) evaluations conducted under paragraph (6);

''(III) formal feedback from institutional and retail investors; and

''(IV) information from subclauses (I) and (II) to implement a mechanism which increases or decreases assignments based on past performance.

''(iii) PROHIBITION.—The Board, in choosing a selection method, may not use a method that would allow for the solicitation or consideration of the preferred national recognized statistical rating organizations of the issuer.

''(iv) ADJUSTMENT OF PROCESS.—The Board shall issue rules describing the process by which it can modify the assignment process described in clause (i).

''(C) RIGHT OF REFUSAL.—

''(i) REFUSAL.—A qualified nationally recognized statistical rating organization selected under subparagraph (A) may refuse to accept a selection for a particular request by—

''(I) notifying the Board of such refusal; and

''(II) submitting to the Board a written explanation of the refusal.

''(ii) SELECTION.—Upon receipt of a notification under clause (i), the Board shall make an additional selection under subparagraph (A).

''(iii) INSPECTION REPORTS.—The Board shall annually submit any explanations of refusals received under clause (i)(II) to the Commission, and such explanatory submissions shall be published in the annual inspection reports required under subsection (p)(3)(C).

''(6) EVALUATION OF PERFORMANCE.—

''(A) IN GENERAL.—The Board shall prescribe rules by which the Board will evaluate the performance of each qualified nationally recognized statistical rating organization, including rules that require, at a minimum, an annual evaluation of each qualified nationally recognized statistical rating organization.

''(B) CONSIDERATIONS.—The Board, in conducting an evaluation under subparagraph (A), shall consider—

''(i) the results of the annual examination conducted under subsection (p)(3);

''(ii) surveillance of credit ratings conducted by the qualified nationally recognized statistical rating organization after the credit ratings are issued, including—

''(I) how the rated instruments perform;

''(II) the accuracy of the ratings provided by the qualified nationally recognized statistical rating organization as compared to the other nationally recognized statistical rating organizations; and

''(III) the effectiveness of the methodologies used by the qualified nationally recognized statistical rating organization; and

''(iii) any additional factors the Board determines to be relevant.

''(C) REQUEST FOR REEVALUATION.—Subject to rules prescribed by the Board, and not less frequently than once a year, a qualified nationally recognized statistical rating organization may request that the Board conduct an evaluation under this paragraph.

''(D) DISCLOSURE.—The Board shall make the evaluations conducted under this paragraph available to Congress.

''(7) RATING FEES CHARGED TO ISSUERS.—

''(A) LIMITED TO REASONABLE FEES.—A qualified nationally recognized statistical rating organization shall charge an issuer a reasonable fee, as determined by the Commission, for an initial credit rating provided under this section.

''(B) FEES.—Fees may be determined by the qualified national recognized statistical rating organizations unless the Board determines it is necessary to issue rules on fees.

''(8) NO PROHIBITION ON ADDITIONAL RATINGS.—Nothing in this section shall prohibit an issuer from requesting or receiving additional credit ratings with respect to a debt security, if the initial credit rating is provided in accordance with this section.

''(9) NO PROHIBITION ON INDEPENDENT RATINGS OFFERED BY NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

''(A) IN GENERAL.—Nothing in this section shall prohibit a nationally recognized statistical rating organization from independently providing a credit rating with respect to a debt security, if—

''(i) the nationally recognized statistical rating organization does not enter into a contract with the issuer of the debt security to provide the initial credit rating; and

''(ii) the nationally recognized statistical rating organization is not paid by the issuer of the debt security to provide the initial credit rating.

''(B) RULE OF CONSTRUCTION.—For purposes of this section, a credit rating described in

subparagraph (A) may not be construed to be an initial credit rating.

''(10) PUBLIC COMMUNICATIONS.—Any communications made with the public by an issuer with respect to the credit rating of a debt security shall clearly specify whether the credit rating was made by—

''(A) a qualified nationally recognized statistical rating organization selected under paragraph (5)(A) to provide the initial credit rating for such debt security; or

''(B) a nationally recognized statistical rating organization not selected under paragraph (5)(A).

''(11) PROHIBITION ON MISREPRESENTATION.—With respect to a debt security, it shall be unlawful for any person to misrepresent any subsequent credit rating provided for such debt security as an initial credit rating provided for such debt security by a qualified nationally recognized statistical rating organization selected under paragraph (5)(A).

''(12) INITIAL CREDIT RATING REVISION AFTER MATERIAL CHANGE IN CIRCUMSTANCE.—If the Board determines that it is necessary or appropriate in the public interest or for the protection of investors, the Board may issue regulations requiring that an issuer that has received an initial credit rating under this subsection request a revised initial credit rating, using the same method as provided under paragraph (4), each time the issuer experiences a material change in circumstances, as defined by the Board.

''(13) CONFLICTS.—

''(A) MEMBERS OR EMPLOYEES OF THE BOARD.—

''(i) LOAN OF MONEY OR SECURITIES PROHIBITED.—

''(I) IN GENERAL.—A member or employee of the Board shall not accept any loan of money or securities, or anything above nominal value, from any nationally recognized statistical rating organization, issuer, or investor.

''(II) EXCEPTION.—The prohibition in subclause (I) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(ii) EMPLOYMENT NEGOTIATIONS PROHIBITION.—A member or employee of the Board shall not engage in employment negotiations with any nationally recognized statistical rating organization, issuer, or investor, unless the member or employee—

''(I) discloses the negotiations immediately upon initiation of the negotiations; and

''(II) recuses himself from all proceedings concerning the entity involved in the negotiations until termination of negotiations or until termination of his employment by the Board, if an offer of employment is accepted.

''(B) CREDIT ANALYSTS.—

''(i) IN GENERAL.—A credit analyst of a qualified nationally recognized statistical rating organization shall not accept any loan of money or securities, or anything above nominal value, from any issuer or investor.

''(ii) EXCEPTION.—The prohibition described in clause (i) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(14) EVALUATION OF CREDIT RATING AGENCY BOARD.—Not later than 5 years after the date that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings, the Commission shall submit to Congress a report that provides recommendations of—

''(A) the continuation of the Board;

''(B) any modification to the procedures of the Board; and

''(C) modifications to the provisions in this subsection.''.

SA 3809. Mr. INOUYE (for himself, Mr. COCHRAN, Mr. DURBIN, Ms. COLLINS, Mr. BYRD, Mr. HARKIN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1171, strike line 6 and all that follows through page 1187, line 9.

SA 3810. Mr. DORGAN (for himself and Mr. GRASSLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1533, line 5, strike ''Section'' and insert the following:

''(a) IN GENERAL.—The Board of Governors shall disclose to Congress and to the public, with respect to any emergency financial assistance provided during the 5-year period preceding the date of enactment of this Act under the authority of the Board of Governors in the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343)—

''(1) the name of each financial company that received such assistance;

''(2) the value or amount and description of the emergency assistance provided, including loans to investment banks from the Federal Reserve discount lending program or special purpose entities;

''(3) the date on which the financial assistance was provided;

''(4) the terms and conditions for the emergency assistance; and

''(5) a full description of any collateral required by the Board of Governors and secured from the recipients of such emergency assistance.

''(b) PUBLIC DISCLOSURE.—Section''.

SA 3811. Mr. DORGAN (for himself, Mr. FEINGOLD, 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:

On page 29, line 14, strike ''and'' and all that follows through ''annually report'' on line 15 and insert the following:

''(M) identify all financial institutions that have domestic or international (or both) operations or activities of a significant size, scope, nature, scale, concentration, volume, frequency of transactions, or in any other manner or method, resulting or arising from stand alone operations or activities individually, or as a mix or combination of such international operations or activities that may pose a grave threat to the financial stability of the United States; and

''(N) annually report''.

On page 33, strike line 3 and all that follows through page 61, line 12 and insert the following:

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of 50 percent or more of the members then serving, shall determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to this Act, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States or such company has significant international operations or activities.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(F) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of 50 percent of the members then serving, shall determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to this Act, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States, or such company has significant international operations or activities.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and

operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

(F) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company

would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this section should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS FOR COMPANIES WITHOUT SIGNIFICANT INTERNATIONAL OPERATIONS.—

(1) IN GENERAL.—If the Council determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, that does not have significant international operations or activities, may pose a grave threat to the financial stability of the United States, the Council, upon an affirmative vote of 50 percent or more of the Council members then serving, shall require the subject company to take one or more of the actions described in paragraph (2), until such company does not pose a grave threat to the financial stability of the United States.

(2) ACTIONS.—The Council may require an entity described in paragraph (1)—

(A) to terminate one or more activities;

(B) to impose conditions on the manner in which the company conducts one or more activities;

(C) to divest, sell or otherwise transfer assets, operations or off balance sheet items or activities to unaffiliated entities; or

(D) take any combination of the actions described in subparagraphs (A) through (C).

(b) MITIGATORY ACTIONS FOR COMPANIES WITH SIGNIFICANT INTERNATIONAL OPERATIONS.—

(1) IN GENERAL.—If the Council determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, has significant international operations or activities of a size, scope, nature, scale, concentration, volume, frequency of transactions, or in any other manner or method, and would pose a grave threat to the financial stability of the United States, and would, therefore, require international or cross-border resolution in the event of failure, the Council, upon an affirmative vote of 50 percent or more of the Council members then serving, shall require the subject company to take one or more of the actions described in subparagraph (B), until such company's international operations or activities no longer pose such a threat.

(2) ACTIONS.—The Council may require an entity described in paragraph (1)—

(A) to terminate one or more activities;

(B) to impose conditions on the manner in which the company conducts one or more activities;

(C) to divest, sell or otherwise transfer assets, operations or off balance sheet items or activities to unaffiliated entities; or

(D) to take any combination of the actions described in subparagraphs (A) through (C).

(3) INTERNATIONAL RESOLUTION MECHANISM.—Because only a binding comprehensive international resolution mechanism will mitigate the grave threat such a subject company poses to the United States, this requirement shall remain in effect until the Council, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, votes that there is a binding, effective, and comprehensive international resolution mechanism. At such time, all such companies shall be transitioned to regulation under paragraph (1).

(4) INTERNATIONAL COOPERATION.—The Council shall work promptly and urgently with all appropriate countries and international authorities to establish a binding, effective, and comprehensive international resolution mechanism, and shall report to Congress not less than once every 6 months on all activities taken in connection with such effort, including actions taken or not taken by other countries and international organizations. The Council shall designate a Vice Chairperson with the sole responsibility for working with international authorities to establish such a resolution mechanism.

(c) The Council shall determine the appropriate time periods for any actions pursuant to this subsection, but any such time periods shall be as soon as prudently possible, and in no event later than 2 years after such action is ordered.

(d) NOTICE AND HEARING.—

(1) IN GENERAL.—The Council, in consultation with the Board of Governors, shall provide to a company described in subsection (a) or (b) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed mitigatory action. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Council, in consultation with the Board of Governors, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Council shall notify the company of the final decision of the Council, including the results of the vote of the Council, as described in subsection (a) or (b).

(e) FACTORS FOR CONSIDERATION.—The Council and the Board of Governors shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and (b), and in a decision described in subsection (d).

(f) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Council may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle of national treatment and competitive equity.

SA 3812. Mr. HARKIN (for himself, Mr. SCHUMER, and Mr. SANDERS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. FAIR ATM FEES.

(a) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 904(d)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)(3)) is amended—

(1) in subparagraph (A), by striking the subparagraph heading and inserting the following:

''(A) FEE DISCLOSURE.—'' ;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) REGULATION OF FEES.—The regulations prescribed under paragraph (1) shall require any fee charged by an automated teller machine operator for a transaction conducted at that automated teller machine to bear a reasonable relation to the cost of processing the transaction, and in no case shall any such fee exceed $0.50.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective not later than 6 months after the date of enactment of this Act.

(c) RULEMAKING.—The Bureau shall issue such rules as may be necessary to carry out this section, not later than 6 months after the date of enactment of this Act.

SA 3813. Ms. KLOBUCHAR (for herself and Mr. BENNET), 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 1440, after line 21, insert the following:

(c) REQUIREMENTS ON MORTGAGE ORIGINATORS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by striking subsection (j) and inserting the following:

''(j) CONSEQUENCE OF FAILURE TO COMPLY.—Any mortgage made in violation of a provision of this section shall be deemed a failure to deliver the material disclosures required under this title, for the purpose of section 125.''; and

(2) by adding at the end the following:

''(n) REQUIREMENTS FOR MORTGAGE ORIGINATORS.—

''(1) ABILITY TO PAY.—

''(A) IN GENERAL.—No creditor or mortgage broker may make, provide, or arrange for any consumer credit transaction secured by the principal dwelling of a consumer without first verifying the reasonable ability of the consumer to pay the scheduled payments of, as applicable—

''(i) principal;

''(ii) interest;

''(iii) real estate taxes; and

''(iv) homeowner insurance, assessments, and mortgage insurance premiums.

''(B) VARIABLE INTEREST RATE.—In the case of any consumer credit transaction secured by the principal dwelling of a consumer for which the applicable annual percentage rate may vary over the life of the credit, the reasonable ability to pay shall be determined, for purposes of this paragraph, on the basis of a fully indexed rate plus 200 basis points and a repayment schedule which achieves full amortization over the life of the extension of credit.

''(C) VERIFICATION OF CONSUMER INCOME AND FINANCIAL RESOURCES.—

''(i) IN GENERAL.—In the case of any consumer credit transaction secured by the principal dwelling of a consumer, the income and financial resources of the consumer shall be verified for purposes of this paragraph by tax returns, payroll receipts, bank records, or other similarly reliable documents.

''(ii) CONSUMER STATEMENT INSUFFICIENT.—A statement by a consumer of income or financial resources shall not be sufficient to establish the existence of any income or financial resources when verifying the reasonable ability of the consumer to repay any consumer credit transaction secured by the principal dwelling of the consumer for purposes of this paragraph.

''(D) OTHER CRITERIA.—A creditor or mortgage broker may rely on additional criteria other than income and financial resources to establish the reasonable ability of a consumer to repay any consumer credit transaction secured by the principal dwelling of the consumer, to the extent such other criteria are also verified through reasonably reliable methods and documentation.

''(E) EQUITY IN DWELLING NOT TO BE TAKEN INTO ACCOUNT.—The consumer's equity in the principal dwelling that secures or would secure the consumer credit transaction may not be used to establish the ability to make the payments described in subparagraph (A) with respect to such transaction.

''(2) PROHIBITION ON STEERING.—

''(A) IN GENERAL.—In connection with a credit transaction secured by the principal dwelling, a mortgage broker or creditor may not—

''(i) steer, counsel, or direct a consumer to rates, charges, principal amount, or prepayment terms that are more expensive for that which the consumer qualifies; or

''(ii) make, provide, or arrange for any consumer credit transaction secured by the principal dwelling of a consumer that is more expensive than that for which the consumer qualifies.

''(B) DUTIES TO CONSUMERS.—If unable to suggest, offer, or recommend to a consumer a home loan that is not more expensive than that for which the consumer qualifies, a mortgage originator shall—

''(i) based on the information reasonably available and using the skill, care, and diligence reasonably expected for a mortgage originator, originate or otherwise facilitate a suitable home mortgage loan by another creditor to a consumer, if permitted by and in accordance with all otherwise applicable law; or

''(ii) disclose to the consumer—

''(I) that the creditor does not offer a home mortgage loan that is not more expensive than a loan for which the consumer qualifies, but that other creditors may offer such a loan; and

''(II) the reasons that the products and services offered by the mortgage originator are not available to or reasonably advantageous for the consumer.

''(C) PROHIBITED CONDUCT.—In connection with a credit transaction secured by the principal dwelling, a mortgage originator may not—

''(i) mischaracterize the credit history of a consumer or the home loans available to a consumer;

''(ii) mischaracterize or suborn the mischaracterization of the appraised value of the property securing the extension of credit; and

''(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discourage a consumer from seeking a home mortgage loan from another creditor or with another mortgage originator.''.

SA 3814. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

''(e)(1) Each Inspector General of a designated Federal entity may at any time be removed, but only for cause. In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before the Senate Committee on Energy and Natural Resources previously announced for May 6, 2010, at 9:30 a.m., has been rescheduled and will now be held on Tuesday, May 11, 2010, at 10 a.m., in room SR–325 of the Russell Senate Office Building.

The purpose of the hearing is to review issues related to deepwater offshore exploration for petroleum and the accident in the Gulf of Mexico involving the offshore oil rig Deepwater Horizon.

For further information, please contact Linda Lance at (202) 224–7556 or Allyson Anderson at (202) 224–7143 or Abigail Campbell at (202) 224–1219.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on May 4, 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 2''.

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 ''ESEA Reauthorization: Improving America's Secondary Schools'' on Tuesday, May 4, 2010. The hearing will commence at 2 p.m. in room 430 of the Dirksen Senate Office Building.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Crime and Drugs, be authorized to meet during the session of the Senate, on May 4, 2010, at 9:30 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Wall Street Fraud and Fiduciary Duties: Can Jail Time Serve as an Adequate Deterrent for Willful Violations?''

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on May 4, 2010, at 2:30 p.m. to conduct a hearing titled, ''Recruiting and Retaining a Robust Federal Workforce.''

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

COLLECTOR CAR APPRECIATION DAY

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to S. Res. 513.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 513) designating July 9, 2010 as ''Collector Car Appreciation Day'' and recognizing that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. 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, there be no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 513) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 513

Whereas many people in the United States maintain classic automobiles as a pastime and do so with great passion and as a means of individual expression;

Whereas the Senate recognizes the effect that the more than 100-year history of the automobile has had on the economic progress of the Nation and supports wholeheartedly all activities involved in the restoration and exhibition of classic automobiles;

Whereas collection, restoration, and preservation of automobiles is an activity shared across generations and across all segments of society;

Whereas thousands of local car clubs and related businesses have been instrumental in preserving a historic part of the heritage of this Nation by encouraging the restoration and exhibition of such vintage works of art;

Whereas automotive restoration provides well-paying, high-skilled jobs for people in all 50 States; and

Whereas automobiles have provided the inspiration for music, photography, cinema, fashion, and other artistic pursuits that have become part of the popular culture of the United States: Now therefore, be it

Resolved, That the Senate—

(1) designates July 9, 2010, as ''Collector Car Appreciation Day'';

(2) recognizes that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States;

(3) encourages the Department of Education, the Department of Transportation, and other Federal agencies to support events and commemorations of ''Collector Car Appreciation Day'', including exhibitions and educational and cultural activities for young people; and

(4) encourages the people of the United States to engage in events and commemorations of ''Collector Car Appreciation Day'' that create opportunities for collector car owners to educate young people on the importance of preserving the cultural heritage of the United States, including through the collection and restoration of collector cars.

Mr. REID. Mr. President, we have had a big day in the Senate. Because of my Republican friends, we have been able to accomplish almost nothing—not quite but almost nothing. I love old cars, and I am glad we are able to pass this important legislation: Collector Car Appreciation Day. Collector Car Appreciation Day.

While people out there are looking for jobs, trying to save their homes, we are doing what the Republicans let us do: Collector Car Appreciation Day. That is the extent of our work because the Republicans have objected to everything we have tried to do on trying to reform Wall Street—for obvious reasons.

We all read the press saying the lobbyists are here lined up with their Gucci shoes and their new suits and a lot of new ties because we are told they are spending millions of dollars a week on these people to stop us from reforming Wall Street.

(b) PURPOSE.—The purpose of the program is to make grants to participating States solely for the implementation of online voter registration systems.

(c) LIMITATION ON USE OF FUNDS.—In no case may grants made under this section be used to reimburse a State for costs incurred in implementing online voter registration systems at the State or local government level if such costs were incurred prior to October 1, 2009.

(d) APPLICATION.—A State seeking to participate in the program under this section shall submit an application to the Election Assistance Commission containing such information, and at such time, as the Election Assistance Commission may specify.

(e) AMOUNT AND AWARDING OF IMPLEMENTATION GRANTS; DURATION OF PROGRAM.—

(1) AMOUNT OF IMPLEMENTATION GRANTS.—

(A) IN GENERAL.—The amount of an implementation grant made to a participating State shall be $150,000.

(B) CONTINUING AVAILABILITY OF FUNDS AFTER APPROPRIATION.—An implementation grant made to a participating State under this section shall be available to the State without fiscal year limitation.

(2) AWARDING OF IMPLEMENTATION GRANTS.—

(A) IN GENERAL.—The Election Assistance Commission shall award implementation grants during each year in which the program is conducted.

(B) ONE GRANT PER STATE.—The Election Assistance Commission shall not award more than 1 implementation grant to any participating State under this section over the duration of the program.

(3) DURATION.—The program shall be conducted for a period of 5 years.

(f) REQUIREMENTS.—A participating State shall establish and implement an online voter registration system which individuals may use to register to vote, update voter registration information, and request an absentee ballot in the State.

(g) BEST PRACTICES, TECHNICAL ASSISTANCE, AND REPORTS.—

(1) IN GENERAL.—The Election Assistance Commission shall—

(A) develop, periodically issue, and, as appropriate, update best practices for implementing online voter registration systems;

(B) provide technical assistance to participating States for the purpose of implementing online voter registration systems; and

(C) submit to the appropriate committees of Congress—

(i) annual reports on the implementation of such online voter registration systems by participating States during each year in which the program is conducted; and

(ii) upon completion of the program conducted under this section, a final report on the program, together with recommendations for such legislation or administrative action as the Election Assistance Commission determines to be appropriate.

(2) CONSULTATION.—In developing, issuing, and updating best practices, developing materials to provide technical assistance to participating States, and developing the annual and final reports under paragraph (1), the Election Assistance Commission shall consult with interested parties, including—

(A) State and local election officials; and

(B) voting rights groups, voter protection groups, groups representing the disabled, and other civil rights or community organizations.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) GRANTS.—There are authorized to be appropriated to award grants under this section, for each of fiscal years 2010 through 2016, $1,800,000, to remain available without fiscal year limitation until expended.

(2) ADMINISTRATION.—There are authorized to be appropriated to administer the program under this section, $200,000 for the period of fiscal years 2010 through 2016, to remain available without fiscal year limitation until expended.

(i) RULE OF CONSTRUCTION.—Nothing in this Act may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

(1) The Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.).

(2) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(3) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).

(4) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(5) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).

(6) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(7) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 513—DESIGNATING JULY 9, 2010, AS ''COLLECTOR CAR APPRECIATION DAY'' AND RECOGNIZING THAT THE COLLECTION AND RESTORATION OF HISTORIC AND CLASSIC CARS IS AN IMPORTANT PART OF PRESERVING THE TECHNOLOGICAL ACHIEVEMENTS AND CULTURAL HERITAGE OF THE UNITED STATES

Mr. TESTER (for himself and Mr. BURR) submitted the following resolution; which was considered and agreed to:

S. RES. 513

Whereas many people in the United States maintain classic automobiles as a pastime and do so with great passion and as a means of individual expression;

Whereas the Senate recognizes the effect that the more than 100-year history of the automobile has had on the economic progress of the Nation and supports wholeheartedly all activities involved in the restoration and exhibition of classic automobiles;

Whereas collection, restoration, and preservation of automobiles is an activity shared across generations and across all segments of society;

Whereas thousands of local car clubs and related businesses have been instrumental in preserving a historic part of the heritage of this Nation by encouraging the restoration and exhibition of such vintage works of art;

Whereas automotive restoration provides well-paying, high-skilled jobs for people in all 50 States; and

Whereas automobiles have provided the inspiration for music, photography, cinema, fashion, and other artistic pursuits that have become part of the popular culture of the United States: Now therefore, be it

Resolved, That the Senate—

(1) designates July 9, 2010, as ''Collector Car Appreciation Day'';

(2) recognizes that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States;

(3) encourages the Department of Education, the Department of Transportation, and other Federal agencies to support events and commemorations of ''Collector Car Appreciation Day'', including exhibitions and educational and cultural activities for young people; and

(4) encourages the people of the United States to engage in events and commemorations of ''Collector Car Appreciation Day'' that create opportunities for collector car owners to educate young people on the importance of preserving the cultural heritage of the United States, including through the collection and restoration of collector cars.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3785. Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. DEMINT, Mr. CRAPO, Mr. BENNETT, 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.

SA 3786. Ms. CANTWELL (for herself, Mr. WHITEHOUSE, and Mr. SANDERS) 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 3787. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3788. 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 3789. Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 3790. Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 3791. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3792. Mrs. BOXER 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 3793. Mrs. MCCASKILL submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3794. Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, 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 3795. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3796. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3797. Mr. SCHUMER (for himself, Mr. REED, and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3798. Mrs. HAGAN 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 3799. Mrs. HAGAN (for herself, Mrs. HUTCHISON, Mr. CARPER, Mr. CORNYN, 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 3800. 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 3801. Mr. HATCH (for himself, Mr. ENZI, 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 3802. 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 3803. 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 3804. 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 3805. Mrs. BOXER 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 3806. Mr. SPECTER (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 3807. Mrs. HAGAN (for herself 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 3808. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and 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 3809. Mr. INOUYE (for himself, Mr. COCHRAN, Mr. DURBIN, Ms. COLLINS, Mr. BYRD, Mr. HARKIN, and Mr. VOINOVICH) 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 3810. Mr. DORGAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3811. Mr. DORGAN (for himself, Mr. FEINGOLD, 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 3812. Mr. HARKIN (for himself, Mr. SCHUMER, and Mr. SANDERS) 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 3813. Ms. KLOBUCHAR (for herself and Mr. BENNET) 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 3814. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3785. Mrs. HUTCHISON (for herself, Ms. LANDRIEU, Mr. DEMINT, Mr. CRAPO, Mr. BENNETT, 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 1090, between lines 18 and 19, add the following:

SEC. 974. EXEMPTION FOR SMALLER ISSUERS UNDER THE SARBANES-OXLEY ACT OF 2002.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) is amended—

(1) in subsection (b), by striking ''With respect'' and inserting ''Except as provided in subsection (c), with respect''; and

(2) by adding at the end the following:

''(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer for which the aggregate worldwide market value of the voting and nonvoting common equity held by persons that are not affiliates of the issuer is less than $150,000,000.''.

(b) STUDY AND REPORT.—

(1) STUDY.—The Chief Economist of the Commission shall conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) for companies for which the aggregate worldwide market value of the voting and nonvoting common equity held by persons that are not affiliates of the issuer is $150,000,000 or more, and not more than $700,000,000, while maintaining investor protections for such companies.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Chief Economist of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under paragraph (1) that includes—

(A) an analysis of the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262);

(B) an analysis of whether reducing the compliance burden for companies described in paragraph (1) or providing a complete exemption from compliance with such section 404(b) for such companies would encourage the companies to list on exchanges in the United States in the initial public offerings of such companies or otherwise facilitate capital formation; and

(C) recommendations about whether the exemption under section 404(c) Sarbanes-Oxley Act of 2002, a added by subsection (a), should be extended to larger issuers.

SA 3786. Ms. CANTWELL (for herself, Mr. WHITEHOUSE, and Mr. SANDERS) 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 762, between lines 5 and 6, insert the following:

SEC. _____. ANTIMARKET MANIPULATION AUTHORITY.

(a) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:

''(c) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—

''(1) PROHIBITION AGAINST MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.

''(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING.—Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact, that such report is false, misleading or inaccurate.

''(B) EFFECT ON OTHER LAW.—Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).

''(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

''(3) ENFORCEMENT.—

''(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

''(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

''(i) contain a description of the charges against the person that is the subject of the complaint; and

''(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

''(C) HEARING.—A hearing described in subparagraph (B)(ii)—

''(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);

''(ii) shall require the person to show cause regarding why—

''(I) an order should not be made—

''(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

''(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

''(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

''(iii) may be held before—

''(I) the Commission; or

''(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

''(4) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (6)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

''(5) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

''(6) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

''(7) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

''(8) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

''(9) EVIDENCE.—On the receipt of evidence under paragraph (3)(C)(iii), the Commission may—

''(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

''(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

''(C) assess such person—

''(i) a civil penalty of not more than an amount equal to the greater of—

''(I) $140,000; or

''(II) triple the monetary gain to such person for each such violation; or

''(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of—

''(I) $1,000,000; or

''(II) triple the monetary gain to the person for each such violation; and

''(D) require restitution to customers of damages proximately caused by violations of the person.

''(10) ORDERS.—

''(A) NOTICE.—The Commission shall provide to a person described in paragraph (9) and the appropriate governing board of the registered entity notice of the order described in paragraph (9) by—

''(i) registered mail;

''(ii) certified mail; or

''(iii) personal delivery.

''(B) REVIEW.—

''(i) IN GENERAL.—A person described in paragraph (9) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

''(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

''(I) for the circuit in which the petitioner carries out the business of the petitioner; or

''(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

''(C) PROCEDURE.—

''(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

''(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

''(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) shall have jurisdiction to affirm, set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.''.

(b) CEASE AND DESIST ORDERS, FINES.—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:

''(d) If any person (other than a registered entity), directly or indirectly, is using or employing, or attempting to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of $140,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): Provided, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c). Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.''.

(c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—Section 22(a)(1) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)) is amended by striking subparagraph (D) and inserting the following:

''(D) who purchased or sold a contract referred to in subparagraph (B) hereof if the violation constitutes the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission

shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.

SA 3787. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 497, strike line 9 and all that follows through page 500, line 15, and insert the following:

SEC. 620. CONCENTRATION LIMITS FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.

(a) DEPOSIT CONCENTRATION LIMIT.—

(1) AMENDMENT.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by striking subsection (f) and inserting the following:

''(f) NATIONWIDE CONCENTRATION LIMITS.—

''(1) CONCENTRATION LIMIT ESTABLISHED.—No single bank holding company may control more than 10 percent of the total amount of deposits of all insured depository institutions in the United States.

''(2) SALE OR TRANSFER REQUIRED.—The Board shall require any bank holding company that the Board determines is in violation of paragraph (1) to sell or otherwise transfer assets to an unaffiliated company, to the extent that the Board determines is necessary to bring the company into compliance with paragraph (1).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

(b) SIZE REQUIREMENTS FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—

(1) AMENDMENT.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. LIMITS ON NONDEPOSIT LIABILITIES FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) FDIC-ASSESSED DEPOSITS.—The term 'FDIC-assessed deposits' means the assessment base of a bank holding company, as calculated under part 327 of title 12 Code of Federal Regulations, or any successor thereto.

''(2) FINANCIAL COMPANY.—The term 'financial company' means any nonbank financial company supervised by the Board.

''(3) NONBANK FINANCIAL COMPANY DEFINITIONS.—The terms 'foreign nonbank financial company', 'nonbank financial company', and 'U.S. nonbank financial company' have the same meanings as in section 102 of the Restoring American Financial Stability Act of 2010.

''(4) NON-DEPOSIT LIABILITIES.—The term 'non-deposit liabilities' means—

''(A) with respect to a bank holding company—

''(i) the total assets of the banking holding company; minus

''(ii) the sum of—

''(I) the tier 1 capital of the bank holding company, taking into account any off-balance-sheet liabilities; and

''(II) the FDIC-assessed deposits of the bank holding company; and

''(B) with respect to a financial company—

''(i) the total assets of the financial company; minus

''(ii) the tier 1 capital of the financial company, taking into account any off-balance-sheet liabilities.

''(5) INCORPORATED TERMS.—The terms 'average total consolidated assets' and 'tier 1 capital' have the meanings given those terms in part 225 of title 12, Code of Federal Regulations, or any successor thereto.

''(b) LIMIT ON NONDEPOSIT LIABILITIES FOR BANK HOLDING COMPANIES.—

''(1) LIMITS FOR BANK HOLDING COMPANIES.—No bank holding company may control nondeposit liabilities that exceed 2 percent of the annual gross domestic product of the United States.

''(2) LIMITS FOR FINANCIAL COMPANIES.—No financial company may control nondeposit liabilities that exceed 3 percent of the annual gross domestic product of the United States.

''(3) DETERMINATION OF GROSS DOMESTIC PRODUCT.—For purposes of this subsection, the annual gross domestic product of the United States shall be determined using the average of the annual gross domestic product of the United States, as calculated by the Bureau of Economic Analysis of the Department of Commerce, during the 16 calendar quarters most recently completed at the time of the determination under paragraph (1).

''(4) TREATMENT OF INSURANCE COMPANIES.—

''(A) IN GENERAL.—Notwithstanding the limits under paragraphs (1) and (2), the Board may establish a separate liability limit for a bank holding company or financial company that the Board determines is primarily engaged in the business of insurance, if the Board determines that such a limit is necessary in order to provide for consistent and equitable treatment of the bank holding company or financial company.

''(B) CONSULTATION.—In establishing a liability limit under subparagraph (A), the Board shall consult with the State insurance regulator for any bank holding company or financial company described in subparagraph (A) having a subsidiary that is regulated by a State insurance regulator.

''(5) TREATMENT OF FOREIGN DEPOSITS.—The Board may exclude from the calculation of nondeposit liabilities under this subsection any foreign or other deposits that are not FDIC-assessed deposits, if the Board determines that such action is necessary to ensure the consistent and equitable treatment of institutions with international operations.

''(c) PROMPT CORRECTIVE ACTION.—

''(1) AUTHORITIES.—The Board shall require a bank holding company or financial company that violates subsection (a) to comply with the limit under subsection (a) by—

''(A) selling or otherwise transferring assets or off-balance-sheet items to unaffiliated firms;

''(B) terminating 1 or more activities of the bank holding company or financial company; or

''(C) imposing conditions on the manner in which the bank holding company or financial company conducts an activity of the bank holding company or financial company.

''(2) CORRECTIVE ACTION PLAN.—Not later than 60 days after the Board determines that a bank holding company or financial holding company has violated subsection (a), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a plan detailing the manner by which the bank holding company or financial company will be brought into compliance with subsection (a).

''(3) REPORTS TO CONGRESS.—

''(A) WRITTEN REPORTS.—At the end of each 60-day period following the date on which the Board submits a plan under paragraph (1) during which a bank holding company or financial company remains in violation of subsection (a), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the compliance of the bank holding company or financial holding company with the plan.

''(B) TESTIMONY.—At the end of each 120-day period following the date on which the Board submits a plan under paragraph (1) during which a bank holding company or financial company remains in violation of subsection (a), the Board shall testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives with respect to the compliance of the bank holding company or financial holding company with the plan.

''SEC. 14. CAPITAL ASSESSMENT PROGRAM.

''(a) ANNUAL CAPITAL ASSESSMENT REQUIRED.—Not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, and annually thereafter, the Board shall conduct a capital assessment of each bank holding company and financial company, to estimate the losses, revenues, and reserve needs for the bank holding company or financial company.

''(b) REPORT.—The Board shall submit an annual report on the results of the capital assessments under subsection (a) to the Secretary of the Treasury, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 3 years after the date of enactment of this Act.

SA 3788. 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 ''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 _____—DISCOUNT PRICING CONSUMER PROTECTION ACT

SEC. _____. DISCOUNT PRICING CONSUMER PROTECTION ACT.

(a) SHORT TITLE.—This section may be cited as the ''Discount Pricing Consumer Protection Act''.

(b) PROHIBITION ON VERTICAL PRICE FIXING.—

(1) AMENDMENT TO THE SHERMAN ACT.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by adding after the first sentence the following: ''Any contract, combination, conspiracy or agreement setting a minimum price below which a product or service cannot be sold by a retailer, wholesaler, or distributor shall violate this Act.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 90 days after the date of enactment of this Act.

SA 3789. Mr. BROWNBACK (for himself and Mr. BOND) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title X, add the following:

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

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

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential mortgages; or

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

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

(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to a third-party finance or leasing source.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of law, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

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

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person or resident in the United States, or any territory of the United States, who is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

SA 3790. Mr. BROWNBACK (for himself and Mr. BOND) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title X, add the following:

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

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

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential mortgages; or

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

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

(B) the contract governing such extension of retail credit or retail leases is not routinely assigned to a third-party finance or leasing source.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of law, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

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

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person resident in the United States or any territory of the United States, licensed by a State, a territory of the United States, or the District of Columbia, to engage in the sale of motor vehicles.

SA 3791. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, 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 1565, after line 23, add the following:

TITLE XIII—CONGO CONFLICT MINERALS

SEC. 1301. DISCLOSURE TO SECURITIES AND EXCHANGE COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by section 763 of this Act, is further amended by adding at the end the following new subsection:

''(o) DISCLOSURES TO COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Commission shall promulgate rules requiring any person described in paragraph (2)—

''(A) to disclose annually to the Commission in a report—

''(i) whether the columbite-tantalite, cassiterite, gold, or wolframite that was necessary as described in paragraph (2)(A)(ii) in the year for which such report is submitted originated or may have originated in the Democratic Republic of Congo or an adjoining country; and

''(ii) a description of the measures taken by the person, which may include an independent audit, to exercise due diligence on the source and chain of custody of such columbite-tantalite, cassiterite, gold, or wolframite, or derivatives of such minerals, in order to ensure that the activities of such person that involve such minerals or derivatives did not directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or an adjoining country; and

''(B) make the information disclosed under subparagraph (A) available to the public on the Internet website of the person.

''(2) PERSON DESCRIBED.—

''(A) IN GENERAL.—A person is described in this paragraph if—

''(i) the person is required to file reports to the Commission under subsection (a)(2); and

''(ii) columbite-tantalite, cassiterite, gold, or wolframite is necessary to the functionality or production of a product of such person.

''(B) DERIVATIVES.—For purposes of this paragraph, if a derivative of a mineral is necessary to the functionality or production of a product of a person, such mineral shall also be considered material to the functionality or production of a product of the person.

''(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President determines that such revision or waiver is in the public interest.

''(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall terminate on the date that is 5 years after the date of the enactment of this subsection.

''(B) EXTENSION BY SECRETARY OF STATE.—The date described in subparagraph (A) shall be extended by 1 year for each year in which the Secretary of State certifies that armed parties to the ongoing armed conflict in the Democratic Republic of Congo or adjoining countries continue to be directly involved and benefitting from commercial activity involving columbite-tantalite, cassiterite, gold, or wolframite.

''(5) ADJOINING COUNTRY DEFINED.—In this subsection, the term 'adjoining country', with respect to the Democratic Republic of Congo, means a country that shares an internationally recognized border with the Democratic Republic of Congo.''.

SEC. 1302. REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that includes the following:

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1301, in promoting peace and security in the eastern Democratic Republic of Congo.

(2) A description of the problems, if any, encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(o).

(3) A description of the adverse impacts of carrying out the provisions of such section 13(o), if any, on communities in the eastern Democratic Republic of Congo.

(4) Recommendations for legislative or regulatory actions that can be taken—

(A) to improve the effectiveness of the provisions of such section 13(o) to promote peace and security in the eastern Democratic Republic of Congo;

(B) to resolve the problems described pursuant to paragraph (2), if any; and

(C) to mitigate the adverse impacts described pursuant paragraph (3), if any.

SA 3792. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title VII, add the following:

Subtitle C—Fiduciary Duty

SEC. 781. SECURITIES EXCHANGE ACT.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by this Act, is further amended by inserting after section 10D, the following:

''SEC. 10E. FIDUCIARY DUTY.

''(a) IN GENERAL.—Each financial services provider shall be subject to a fiduciary duty, the obligations of which shall depend upon the particular facts and circumstances, to any covered client with respect to any individualized advice or individualized recommendation provided, directly or indirectly, to such client in connection with any transaction involving the purchase or sale of—

''(1) a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(2) any CEA-regulated financial instrument; or

''(3) any financial instrument, the value of which is derived from a security, CEA-regulated financial instrument, or other financial instrument.

''(b) ENFORCEMENT.—This section shall be enforced—

''(1) as to persons who are subject to the jurisdiction of a Federal functional regulator—

''(A) by that regulator in Federal courts;

''(B) by the office of the Attorney General of the United States in Federal courts; or

''(C) by State attorneys general or State administrative agencies in State courts; and

''(2) as to persons who are not described in paragraph (1)—

''(A) by the Securities and Exchange Commission or the Commodity Futures Trading Commission in Federal courts;

''(B) by the office of the Attorney General of the United States in Federal courts; or

''(C) by State attorneys general or State administrative agencies in State courts.

''(c) AUTHORITY TO DEFINE DUTY.—As to persons who are subject to the jurisdiction of a Federal functional regulator, that regulator may, by rule, define and clarify the fiduciary duty referred to in subsection (a) with respect to such persons.

''(d) LIMITATION.—The fiduciary duty referred to in subsection (a) shall not apply to advice that is subject to the fiduciary duty under section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) in connection with a relationship that is subject to that section.

''(e) DEFINITIONS.—For purposes of this section—

''(1) the term 'financial services provider' means any person who, for compensation, is in the business of providing advice regarding, creating, underwriting, buying, selling, effecting transactions in or dealing in the financial instruments described in subparagraphs (1), (2), or (3) of subsection (a);

''(2) the term 'individualized' means any advice or recommendation that reflects the particular needs or circumstances of the covered client to which it is provided;

''(3) the term 'covered client' means—

''(A) any pension plan as defined in section 3(2)(A) of the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1002(2)(A));

''(B) any employee benefit plan described under paragraph (1) or (3) of section 4(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(1), (3)); and

''(C) any State and any county, municipality, political subdivision, agency or instrumentality of a State and any Federal agency or instrumentality thereof;

''(4) the term 'CEA-regulated financial instrument' means any financial instrument regulated by the Commodity Futures Trading Commission or under the Commodity Exchange Act (7 U.S.C. 1 et seq.); and

''(5) the term 'Federal functional regulator' means—

''(A) the Board of Governors of the Federal Reserve System;

''(B) the Office of the Comptroller of the Currency;

''(C) the Board of Directors of the Federal Deposit Insurance Corporation;

''(D) the National Credit Union Administration;

''(E) the Securities and Exchange Commission;

''(F) the Commodity Futures Trading Commission;

''(G) the Director of the Federal Housing Finance Agency; and

''(H) the Bureau of Consumer Financial Protection.''.

SEC. 782. COMMODITY EXCHANGE ACT.

Section 6b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by adding at the end the following:

''(e) FIDUCIARY DUTY.—

''(1) IN GENERAL.—A financial services provider shall be subject to a fiduciary duty, the obligations of which shall depend upon the particular facts and circumstances, to any covered client with respect to any individualized advice or individualized recommendation provided, directly or indirectly, to such client in connection with any transaction involving the purchase or sale of—

''(A) a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(B) any CEA-regulated financial instrument; or

''(C) any financial instrument the value of which is derived from a security, CEA-regulated financial instrument, or other financial instrument.

''(2) ENFORCEMENT.—This section shall be enforced—

''(A) as to persons who are subject to the jurisdiction of a Federal functional regulator—

''(i) by that regulator in Federal courts;

''(ii) by the office the Attorney General of the United States in Federal courts; or

''(iii) by State attorneys general or State administrative agencies in State courts; and

''(B) as to other persons—

''(i) by the Securities and Exchange Commission or the Commodity Futures Trading Commission in Federal courts;

''(ii) by the office the Attorney General of the United State in Federal courts; or

''(iii) by State attorneys general or State administrative agencies in State courts.

''(3) AUTHORITY TO DEFINE DUTY.—As to persons who are subject to the jurisdiction of a Federal functional regulator, that regulator may, by rule, define and clarify the fiduciary duty referred to in paragraph (1) with respect to such persons.

''(4) LIMITATION.—The fiduciary duty referred to in paragraph (1) shall not apply to advice that is subject to the fiduciary duty under section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) in connection with a relationship that is subject to that section.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'financial services provider' means any person who, for compensation, engages in the business of providing advice regarding, creating, underwriting, buying, selling, effecting transactions in or dealing in the financial instruments described in subparagraphs (A), (B), or (C) of paragraph (1);

''(B) the term 'individualized' means any advice or recommendation that reflects the particular needs or circumstances of the covered client to which it is provided;

''(C) the term 'covered client' means—

''(i) any pension plan as defined in section 3(2)(A) of the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1002(2)(A));

''(ii) any employee benefit plan described under paragraph (1) or (3) of section 4(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(1), (3)); and

''(iii) any State and any county, municipality, political subdivision, agency or instrumentality of a State and any Federal agency or instrumentality thereof;

''(D) the term 'CEA-regulated financial instrument' means any financial instrument regulated by the Commission or under this Act; and

''(E) the term 'Federal functional regulator' means—

''(i) the Board of Governors of the Federal Reserve System;

''(ii) the Office of the Comptroller of the Currency;

''(iii) the Board of Directors of the Federal Deposit Insurance Corporation;

''(iv) the National Credit Union Administration;

''(v) the Securities and Exchange Commission;

''(vi) the Commodity Futures Trading Commission;

''(vii) the Director of the Federal Housing Finance Agency; and

''(viii) the Bureau of Consumer Financial Protection.''.

SA 3793. Mrs. MCCASKILL submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 122. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(h) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(h))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) COUNCIL OF INSPECTORS GENERAL WORKING GROUPS.—

(A) WORKING GROUPS TO EVALUATE COUNCIL.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—A Council of Inspectors General Working Group established under this subparagraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this subparagraph.

(B) WORKING GROUPS FOR FINANCIAL COMPANIES UNDERGOING RESOLUTION.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General shall convene a Council of Inspectors General Working Group for each financial company for which the Federal Deposit Insurance Corporation is appointed as receiver under section 202.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—Not later than 270 days after the appointment of the Federal Deposit Insurance Corporation as receiver for the financial company for which a Council of Inspectors General Working Group is convened under clause (i), such Working Group shall submit to the primary financial regulatory agency and to Congress a report that includes—

(I) the reasons for such financial company's failure;

(II) the reasons for the appointment of the Federal Deposit Insurance Corporation as receiver for such financial company; and

(III) recommendations for preventing future failures of financial companies.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 3794. Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, 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. ____. FINANCIAL FRAUD PROVISIONS.

(a) SENTENCING GUIDELINES.—

(1) SECURITIES FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements, and appropriately account for the potential and actual harm to the public and the financial markets from the offenses.

(B) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(2) FINANCIAL INSTITUTION FRAUD.—

(A) DIRECTIVE.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses be increased in comparison to those provided on the date of enactment of this Act under the guidelines and policy statements and to ensure a term of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.

(B) REQUIREMENTS.—In amending the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(b) EXTENSION OF STATUTE OF LIMITATIONS FOR SECURITIES FRAUD VIOLATIONS.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3301. Securities fraud offenses

''(a) DEFINITION.—In this section, the term 'securities fraud offense' means a violation of, or a conspiracy or an attempt to violate—

''(1) section 1348;

''(2) section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a));

''(3) section 24 of the Securities Act of 1933 (15 U.S.C. 77x);

''(4) section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–17);

''(5) section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a–48); or

''(6) section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy).

''(b) LIMITATION.—No person shall be prosecuted, tried, or punished for a securities fraud offense, unless the indictment is found or the information is instituted within 6 years after the commission of the offense.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3301. Securities fraud offenses.''.

(c) FALSE CLAIMS AND INTERNATIONAL MONEY LAUNDERING.—

(1) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.—Section 3730(h) of title 31, United States Code, is amended—

(A) in paragraph (1), by striking ''or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter'' and inserting ''agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter''; and

(B) by adding at the end the following:

''(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.''.

(2) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO AWARDS TO QUI TAM PLAINTIFFS.—Section 3730(d)(1) of title 31, United States Code, is amended, in the second sentence, by striking ''in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media,'' and inserting ''in a Federal criminal, civil or administrative hearing in which the Government or its agent is a party, in a congressional, Government Accountability Office, or other Federal audit, report, hearing or investigation, or in the news media,''.

(3) APPLICATION OF THE INTERNATIONAL MONEY LAUNDERING STATUTE TO TAX EVASION.—Section 1956(a)(2)(A) of title 18, United States Code, is amended by—

(A) inserting ''(i)'' before ''with the intent to promote''; and

(B) adding at the end the following:

''(ii) with the intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or''.

(d) PROMOTING CRIMINAL ACCOUNTABILITY.—

(1) DEFINITIONS.—In this subsection—

(A) the terms ''Bureau'' and ''Federal consumer financial law'' have the meanings given those terms in section 1002; and

(B) the term ''civil investigative demand'' has the meaning given that term in section 1051.

(2) REVIEW OF CIVIL INVESTIGATIVE DEMANDS BY ATTORNEY GENERAL.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Bureau may not issue a civil investigative demand unless—

(i) the Bureau consults with the Attorney General of the United States regarding the civil investigative demand; and

(ii) the Attorney General determines that issuing the civil investigative demand would be consistent with the guidelines issued under subparagraph (C).

(B) PERIOD FOR REVIEW.—If the Attorney General has not made a determination described in subparagraph (A)(ii) as of the date that is 45 days after the date on which the Attorney General receives a request to issue a civil investigative demand, the Attorney General shall be deemed to have determined that issuing the civil investigative demand would be consistent with the guidelines issued under subparagraph (C).

(C) GUIDELINES.—

(i) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Bureau, shall promulgate guidelines for parallel proceedings involving the Federal consumer financial laws.

(ii) CONSIDERATIONS.—In promulgating guidelines under this subparagraph, the Attorney General and the Bureau shall consider—

(I) the significant deterrent and punitive effects of criminal sanctions;

(II) the ability to use a criminal conviction as collateral estoppel in a subsequent civil case;

(III) the possibility that the imposition of civil penalties might undermine a prosecution or the severity of a subsequent criminal sentence;

(IV) preservation of the secrecy of a criminal investigation, including the use of covert investigative techniques;

(V) prevention of the premature discovery of evidence by a defendant in a criminal case through the exploitation by the defendant of the civil discovery process;

(VI) avoidance of unnecessary litigation issues, such as unfounded defense claims of misuse of process in a civil or criminal action; and

(VII) avoidance of duplicative interviews of witnesses and subjects.

SA 3795. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. USE OF CREDIT CHECKS PROHIBITED FOR EMPLOYMENT PURPOSES.

(a) PROHIBITION FOR EMPLOYMENT AND ADVERSE ACTION.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended—

(1) in subsection (a)(3)(B), by inserting ''within the restrictions set forth in subsection (b)'' after ''purposes'';

(2) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively; and

(3) by inserting after subsection (a) the following new subsection:

''(b) USE OF CERTAIN CONSUMER REPORT PROHIBITED FOR EMPLOYMENT PURPOSES OR ADVERSE ACTIONS.—

''(1) GENERAL PROHIBITION.—Except as provided in paragraph (3), a person, including a prospective employer or current employer, may not use a consumer report or investigative consumer report, or cause a consumer report or investigative consumer report to be procured, with respect to any consumer where any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity—

''(A) for employment purposes; or

''(B) for making an adverse action, as described in section 603(k)(1)(B)(ii).

''(2) SOURCE OF CONSUMER REPORT IRRELEVANT.—The prohibition described in paragraph (1) shall apply even if the consumer consents or otherwise authorizes the procurement or use of a consumer report for employment purposes or in connection with an adverse action with respect to such consumer.

''(3) EXCEPTIONS.—Notwithstanding the prohibitions set forth in this subsection, and consistent with the other provisions of this title, an employer may use a consumer report with respect to a consumer in any case in which —

''(A) the consumer applies for, or currently holds, employment that requires national security or Federal Deposit Insurance Corporation clearance;

''(B) the consumer applies for, or currently holds, employment with a State or local government agency which otherwise requires use of a consumer report;

''(C) the consumer applies for, or currently holds, any management position or other position involving the handling or supervision of, or access to, customer funds or accounts at a financial institution (including any credit union); and

''(D) use of the consumer report with respect to the consumer is otherwise required by law.

''(4) EFFECT ON DISCLOSURE AND NOTIFICATION REQUIREMENTS.—The exceptions described in paragraph (3) shall have no effect on the other requirements of this title, including requirements in regards to disclosure and notification to a consumer when permissibly using a consumer report for employment purposes or for taking an adverse action with respect to such consumer.''.

(b) CONFORMING AMENDMENTS AND CROSS REFERENCES.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) in subsection (d)(3), by striking ''604(g)(3)'' and inserting ''604(h)(3)''; and

(B) in subsection (o), by striking ''A'' and inserting ''Subject to the restrictions set forth in section 604(b), a'';

(2) in section 604 (15 U.S.C. 1681b)—

(A) in subsection (a), by striking ''subsection (c)'' and inserting ''subsection (d)'';

(B) in subsection (c), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (2)(A), by inserting ''and subject to the restrictions set forth in subsection (b)'' after ''subparagraph (B)''; and

(ii) in paragraph (3)(A), by inserting ''and subject to the restrictions set forth in subsection (b)'' after ''subparagraph (B)'';

(C) in subsection (d)(1), as redesignated by subsection (a)(2) of this section, by striking ''subsection (e)'' in both places it appears and inserting ''subsection (f)'';

(D) in subsection (f), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (1), by striking ''subsection (c)(1)(B)'' and inserting ''subsection (d)(1)(B)''; and

(ii) in paragraph (5), by striking ''subsection (c)(1)(B)'' and inserting ''subsection (d)(1)(B)'';

(3) in section 607(e)(3)(A) (15 U.S.C. 1681e(e)(3)(A)), by striking ''604(b)(4)(E)(i)'' and inserting ''604(c)(4)(E)(i)'';

(4) in section 609 (15 U.S.C. 1681g)—

(A) in subsection (a)(3)(C)(i), by striking ''604(b)(4)(E)(i)'' and inserting ''604(c)(4)(E)(i)''; and

(B) in subsection (a)(3)(C)(ii), by striking ''604(b)(4)(A)'' and inserting ''604(c)(4)(A)'';

(5) in section 613(a) (15 U.S.C. 1681k(a)), by striking ''section 604(b)(4)(A)'' and inserting ''section 604(c)(4)(A)''; and

(6) in section 615 (15 U.S.C. 1681m)—

(A) in subsection (d)(1), by striking ''section 604(c)(1)(B)'' and inserting ''section 604(d)(1)(B)'';

(B) in subsection (d)(1)(E), by striking ''section 604(e)'' and inserting ''section 604(f)''; and

(C) in subsection (d)(2)(A), by striking ''section 604(e)'' and inserting ''section 604(f)''.

SA 3796. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. STUDY AND REPORT ON PAYDAY LENDING.

(a) STUDY REQUIRED.—The research unit established by the director under section 1013 shall conduct a study on the ability of the unemployed to access credit under reasonable terms, including an analysis of—

(1) the effects of the practice of ''payday lending'' on the unemployed;

(2) the potential impacts, both positive and negative, of using Federal or State unemployment benefit checks as collateral for obtaining a payday loan;

(3) alternative credit options for the unemployed, including the accessibility and costs associated with such options; and

(4) such other considerations as are determined to be relevant.

(b) REPORT TO THE BUREAU.—Not later than 1 year after the date of enactment of this Act, the research unit established under section 1013 shall—

(1) provide to the Bureau a report on the results of the study conducted under subsection (a), together with recommendations to help the unemployed to access credit on reasonable terms; and

(2) shall make such report available to the public.

SA 3797. Mr. SCHUMER (for himself, Mr. REED, and Mr. AKAKA,) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts; to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1248, strike line 22 and all that follows through page 1249, line 10 and insert the following:

(1) COVERED PERSONS.—This section shall apply to any covered person who is not a person described in section 1025(a) or 1026(a).

On page 1255, line 5, strike ''(A) IN GENERAL.—The Bureau'' and insert the following:

''(A) NOTICE.—If the Federal Trade Commission is authorized to enforce any Federal consumer financial law described in paragraph (1), either the Bureau or the Federal Trade Commission shall serve written notice to the other of the intent to take any enforcement action, prior to initiating such an enforcement action, except that if the Bureau or the Federal Trade Commission, in filing the action, determines that prior notice is not feasible, the Bureau or the Federal Trade Commission may provide notice immediately upon initiating such enforcement action.

''(B) COORDINATION.—The Bureau''.

On page 1255, line 10, strike ''(1)(A)''.

On page 1255, line 19, strike ''(B)'' and insert ''(C)''.

On page 1256, line 15, strike ''(C)'' and insert ''(D)''.

On page 1256, line 19, strike ''(D)'' and insert ''(E)''.

On page 1255, line 10, strike ''(1)(A)''.

SA 3798. Mrs. HAGAN 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, line 12, strike ''or other'' and insert '', appropriate representatives of State banking regulators, as such representatives are to be designated by a selection process determined by the State banking regulators, and other''.

On page 1249, line 13, after ''Commission'' insert ''and appropriate representatives of State banking regulators, as such representatives are to be designated by a selection process determined by the State banking regulators,''.

On page 1251, line 17, after ''authorities,'' insert ''including any formal committee established by State regulators to coordinate multi-state examinations or enforcement efforts for a class of covered persons,''.

SA 3799. Mrs. HAGAN (for herself, Mrs. HUTCHISON, Mr. CARPER, Mr. CORNYN, 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 485, line 14, strike ''and'' and all that follows through line 25 and insert the following:

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

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SA 3800. 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 94, between lines 4 and 5, insert the following:

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

SA 3801. Mr. HATCH (for himself, Mr. ENZI, 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:

At the end of title XII, insert the following:

TITLE XIII—TREATMENT OF FANNIE MAE AND FREDDIE MAC

SEC. 1301. PLAN ON REFORMING FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury, the Director of the Federal Housing Finance Agency, and the Secretary of Housing and Urban Development shall propose and submit to Congress a plan to end the conservatorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and to reform such entities.

(b) REQUIREMENTS.—The plan required under subsection (a) shall be drafted so as to

have the least amount of impact as possible on—

(1) the provision of affordable housing to underserved areas; and

(2) the cost to the taxpayer.

SA 3802. 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 124, line 9, insert after the semicolon, ''and''

''(ii) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to enhance their effectiveness in liquidating and reorganizing financial companies, including whether provisions relating to qualified financial contracts should be modified.''

SA 3803. 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 278 line 23, strike ''$50,000,000,000'' and insert ''$150,000,000,000''.

On page 284, between lines 10 and 11, insert the following:

''(15) LIMITATION ON USE OF FUND.—Notwithstanding any other provision of law, amounts in the Orderly Liquidation Fund may not be used under any circumstances to 'bail out' or maintain the solvency of any covered institution.''.

SA 3804. 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:

At the end of subtitle A of title I, add the following:

SEC. 122. ENHANCED DISCLOSURES.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(n) ENHANCED DISCLOSURES REQUIRED.—

''(1) IN GENERAL.—The Commission shall, by rule, with respect to each issuer that is subject to enhanced standards under title I of the Restoring American Financial Stability Act of 2010, and that is required to file periodic reports with the Commission, and any other issuers that the Commission determines appropriate—

''(A) require each such issuer to provide, together with its annual reports to the Commission, a detailed written description of all off balance sheet activities of the issuer and a detailed justification for not putting each of those activities on the balance sheet; and

''(B) pursuant to its authority under section 13 and 15(d), require each such issuer to disclose in each quarterly and annual filings required by the rules of the Commission—

''(i) the total liabilities of the issuer as of period end and total assets as of period end;

''(ii) the average daily liabilities during the measured period and average daily assets during the measured period;

''(iii) any short term borrowings, including separately presenting securities sold under agreements to repurchase, shown as of the end of the period and as a daily average during the period;

''(iv) a period end leverage ratio, measured as total equity capital as of period end, divided by total assets as of period end;

''(v) an average daily leverage ratio, measured as average daily equity capital during the measured period, divided by average daily assets during the measured period; and

''(vi) any other leverage or liquidity ratios that the Commission determines, by rule, to be appropriate.

''(2) TRANSACTIONS AFFECTING FUTURE LIQUIDITY.—The Commission shall issue rules requiring the disclosure of information on transactions that were accounted for as sales by the issuer, but have implications for future liquidity.

''(3) GRAPHIC REPRESENTATIONS AUTHORIZED.—The disclosures under this subsection may include a graphic representation of the information required to be disclosed.''.

SA 3805. Mrs. BOXER 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 1435, line 19, strike ''(g)''and insert the following:

''(g) PROHIBITION ON STEERING INCENTIVES.—

''(1) IN GENERAL.—For any loan secured by real property or a dwelling, the total amount of direct and indirect compensation from any source permitted to a mortgage originator may not vary based on the terms or conditions of the loan.

''(2) LIMITATIONS ON FINANCING OF ORIGINATION FEES AND COSTS.—

''(A) IN GENERAL.—For any loan secured by real property or a dwelling, a mortgage 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 mortgage originator.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), a mortgage originator may arrange for a consumer to finance an origination fee or cost through the rate, if—

''(i) the mortgage originator receives no other compensation, however denominated, directly or indirectly, from the consumer or any other person;

''(ii) the loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated;

''(iii) the loan does not contain a prepayment penalty;

''(iv) the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where the term 'points and fees' has the same meaning as in section 103(aa)(4);

''(v) the loan does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Federal banking agencies; and

''(vi) there is no other conflict of interest between the mortgage originator and the consumer.

''(3) MORTGAGE ORIGINATOR.—As used in this subsection, the term 'mortgage originator'—

''(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

''(i) takes a residential mortgage loan application;

''(ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or

''(iii) offers or negotiates terms of a residential mortgage loan;

''(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

''(C) does not include any person who is—

''(i) not otherwise described in subparagraph (A) or (B), and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph; or

''(ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A), and who does not advise a consumer on loan terms (including rates, fees, and other costs);

''(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated for performing such brokerage activities by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

''(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 1 property in any 36-month period, provided that such loan—

''(i) is fully amortizing;

''(ii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

''(iii) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

''(iv) meets any other criteria that the Federal banking agencies may prescribe; and

''(F) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan

for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

''(h)''.

SA 3806. Mr. SPECTER (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:

At the end of title IV, insert the following:

SEC. _____. FIDUCIARY STANDARD OF CARE FOR BROKER-DEALERS.

Section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is amended by inserting at the end the following:

''(3)(A)(i) A registered broker or dealer, or any agent, employee or other person acting on behalf of such a broker or dealer, that provides investment advice regarding the purchase or sale of a security or a security based swap, or solicits or offers to enter into, or enters into a purchase or sale of a security or a security-based swap, shall have a fiduciary duty to act in the best interests of the investor and to disclose the specific facts relating to any actual or reasonably anticipated conflict of interest relating to that security or transaction or contemplated transaction.

''(ii) The Commission may adopt rules and regulations to define the full scope and application of the duty referred to in clause (i), to grant exceptions, and to adopt safe harbors, if and to the extent the Commission finds that such additional rules, regulations, exceptions, and safe harbors are necessary or appropriate as in the public interest or for the protection of investors.

''(B)(i) It shall be unlawful for any person subject to a fiduciary duty under subparagraph (A) to effect, directly or indirectly, by the use of any instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, any transaction in, or to induce or attempt to induce, the purchase or sale of any security or security-based swap, if in connection with such purchase or sale, or attempted purchase or sale, such person willfully violates that duty or disclosure obligation.

''(ii) Any person who violates clause (i) shall be fined under title 18, United States Code, or imprisoned not more than 25 years, or both.''.

SA 3807. Mrs. HAGAN (for herself 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 486, strike lines 1 through 12, and insert the following:

(3) the term ''sponsoring or investing'', when used with respect to a hedge fund or private equity fund—

(A) means—

(i) serving as a general partner, managing member, or trustee of the fund;

(ii) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(iii) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

(B) includes any activity that would cause the aggregate investment of an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, in hedge funds and private equity funds to exceed 10 percent of the total Tier 1 capital (as that term is defined in section 2(o) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)) of the institution, company, or subsidiary; and

(C) except as provided in subparagraph (B), does not include any activity described under this paragraph—

(i) that is conducted in connection with, or in facilitation of, customer relationships or on behalf of unaffiliated customers;

(ii) that is related to investing a de minimis amount, as determined by the Council, in any hedge fund or private equity fund, not to exceed 10 percent of the total equity of any such fund; and

(iii) for which the obligations of any hedge or private equity funds are not guaranteed, directly or indirectly, by any affiliate.

On page 490, strike line 9 and all that follows through page 491, line 10.

SA 3808. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, and Mr. 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 1006, line 7, strike ''Such inaccuracy'' and all that follows through line 9, and insert the following: ''Such inaccuracy necessitates changes in the way initial credit ratings are assigned.''.

On page 1042, strike lines 17 through 24, and insert the following:

(a) STUDY.—Not later than 1 year after the Credit Rating Agency Board, as established under section 15E(w) of the Securities Exchange Act of 1934, begins to assign nationally recognized statistical rating organizations to provide initial credit ratings, the Comptroller General of the United States shall conduct a study on the effectiveness of the implementation of the changes made to that section by section 939D of this Act, including the selection method by which the Credit Rating Agency Board assigns nationally recognized statistical rating organizations to provide initial credit ratings.

On page 1044, between lines 2 and 3, insert the following:

SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this Act, is amended by adding at the end the following:

''(w) INITIAL CREDIT RATING ASSIGNMENTS.—

''(1) DEFINITIONS.—In this subsection the following definitions shall apply:

''(A) BOARD.—The term 'Board' means the Credit Rating Agency Board established under paragraph (2).

''(B) QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'qualified nationally recognized statistical rating organization', with respect to a category of structured finance products, means a nationally recognized statistical rating organization that the Commission determines, under paragraph (3)(B), to be qualified to issue credit ratings with respect to such category.

''(C) REGULATIONS.—

''(i) CATEGORY OF STRUCTURED FINANCE PRODUCTS.—

''(I) IN GENERAL.—The term 'category of structured finance products'—

''(aa) shall include any asset backed security and any structured product based on an asset-backed security; and

''(bb) shall be further defined and expanded by the Commission, by rule, as necessary.

''(II) CONSIDERATIONS.—In issuing the regulations required subclause (I), the Commission shall consider—

''(aa) the types of issuers that issue structured finance products;

''(bb) the types of investors who purchase structured finance products;

''(cc) the different categories of structured finance products according to—

''(AA) the types of capital flow and legal structure used;

''(BB) the types of underlying products used; and

''(CC) the types of terms used in debt securities;

''(dd) the different values of debt securities; and

''(ee) the different numbers of units of debt securities that are issued together.

''(ii) REASONABLE FEE.—The Board shall issue regulations to define the term 'reasonable fee'.

''(2) CREDIT RATING AGENCY BOARD.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall—

''(i) establish the Credit Rating Agency Board, which shall be a self-regulatory organization;

''(ii) subject to subparagraph (C), select the initial members of the Board; and

''(iii) establish a schedule to ensure that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings not later than 1 year after the selection of the members of the Board.

''(B) SCHEDULE.—The schedule established under subparagraph (A)(iii) shall prescribe when—

''(i) the Board will conduct a study of the securitization and ratings process and provide recommendations to the Commission;

''(ii) the Commission will issue rules and regulations under this section;

''(iii) the Board may issue rules under this subsection; and

''(iv) the Board will—

''(I) begin accepting applications to select qualified national recognized statistical rating organizations; and

''(II) begin assigning qualified national recognized statistical rating organizations to provide initial ratings.

''(C) MEMBERSHIP.—

''(i) IN GENERAL.—The Board shall initially be composed of an odd number of members selected from the industry, with the total numerical membership of the Board to be determined by the Commission.

''(ii) SPECIFICATIONS.—Of the members initially selected to serve on the Board—

''(I) not less than a majority of the members shall be representatives of the investor industry, including both institutional and retail investors who do not represent issuers;

''(II) not less than 1 member should be a representative of the issuer industry;

''(III) not less than 1 member should be a representative of the credit rating agency industry; and

''(IV) not less than 1 member should be an independent member.

''(iii) TERMS.—Initial members shall be appointed by the Commission for a term of 4 years.

''(iv) NOMINATION AND ELECTION OF MEMBERS.—

''(I) IN GENERAL.—Prior to the expiration of the terms of office of the initial members, the Commission shall establish fair procedures for the nomination and election of future members of the Board.

''(II) MODIFICATIONS OF THE BOARD.—Prior to the expiration of the terms of office of the initial members, the Commission—

''(aa) may increase the size of the board to a larger odd number and adjust the length of future terms; and

''(bb) shall retain the composition of members described in clause (ii).

''(v) RESPONSIBILITIES OF MEMBERS.—Members shall perform, at a minimum, the duties described in this subsection.

''(vi) RULEMAKING AUTHORITY.—The Commission shall, if it determines necessary and appropriate, issue further rules and regulations on the composition of the membership of the Board and the responsibilities of the members.

''(D) OTHER AUTHORITIES OF THE BOARD.—The Board shall have the authority to levy fees from qualified nationally recognized statistical rating organization applicants, and periodically from qualified nationally recognized statistical rating organizations as necessary to fund expenses of the Board.

''(E) REGULATION.—The Commission has the authority to regulate the activities of the Board, and issue any further regulations of the Board it deems necessary, not in contravention with the intent of this section.

''(3) BOARD SELECTION OF QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—

''(A) APPLICATION.—

''(i) IN GENERAL.—A nationally recognized statistical rating organization may submit an application to the Board, in such form and manner as the Board may require, to become a qualified nationally recognized statistical rating organization with respect to a category of structured financial products.

''(ii) CONTENTS.—An application submitted under clause (i) shall contain—

''(I) information regarding the institutional and technical capacity of the nationally recognized statistical rating organization to issue credit ratings;

''(II) information on whether the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section; and

''(III) any additional information the Board may require.

''(iii) REJECTION OF APPLICATIONS.—The Board may reject an application submitted under this paragraph if the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section.

''(B) SELECTION.—The Board shall select qualified national recognized statistical rating organizations with respect to each category of structured finance products from among nationally recognized statistical rating organizations that submit applications under subparagraph (A).

''(C) RETENTION OF STATUS AND OBLIGATIONS AFTER SELECTION.—An entity selected as a qualified nationally recognized statistical rating organization shall retain its status and obligations under the law as a nationally recognized statistical rating organization, and nothing in this subsection grants authority to the Commission or the Board to exempt qualified nationally recognized statistical rating organizations from obligations or requirements otherwise imposed by Federal law on nationally recognized statistical rating organizations

''(4) REQUESTING AN INITIAL CREDIT RATING.—An issuer that seeks an initial credit rating for a structured finance product—

''(A) may not request an initial credit rating from a nationally recognized statistical rating organization; and

''(B) shall submit a request for an initial credit rating to the Board, in such form and manner as the Board may prescribe.

''(5) ASSIGNMENT OF RATING DUTIES.—

''(A) IN GENERAL.—For each request received by the Board under paragraph (4)(B), the Board shall select a qualified nationally recognized statistical rating organization to provide the initial credit rating to the issuer.

''(B) METHOD OF SELECTION.—

''(i) IN GENERAL.—The Board shall—

''(I) evaluate a number of selection methods, including a lottery or rotating assignment system, incorporating the factors described in clause (ii), to reduce the conflicts of interest that exist under the issuer-pays model; and

''(II) prescribe and publish the selection method to be used under subparagraph (A).

''(ii) CONSIDERATION.—In evaluating a selection method described in clause (i)(I), the Board shall consider—

''(I) the information submitted by the qualified nationally recognized statistical rating organization under paragraph (3)(A)(ii) regarding the institutional and technical capacity of the qualified nationally recognized statistical rating organization to issue credit ratings;

''(II) evaluations conducted under paragraph (6);

''(III) formal feedback from institutional and retail investors; and

''(IV) information from subclauses (I) and (II) to implement a mechanism which increases or decreases assignments based on past performance.

''(iii) PROHIBITION.—The Board, in choosing a selection method, may not use a method that would allow for the solicitation or consideration of the preferred national recognized statistical rating organizations of the issuer.

''(iv) ADJUSTMENT OF PROCESS.—The Board shall issue rules describing the process by which it can modify the assignment process described in clause (i).

''(C) RIGHT OF REFUSAL.—

''(i) REFUSAL.—A qualified nationally recognized statistical rating organization selected under subparagraph (A) may refuse to accept a selection for a particular request by—

''(I) notifying the Board of such refusal; and

''(II) submitting to the Board a written explanation of the refusal.

''(ii) SELECTION.—Upon receipt of a notification under clause (i), the Board shall make an additional selection under subparagraph (A).

''(iii) INSPECTION REPORTS.—The Board shall annually submit any explanations of refusals received under clause (i)(II) to the Commission, and such explanatory submissions shall be published in the annual inspection reports required under subsection (p)(3)(C).

''(6) EVALUATION OF PERFORMANCE.—

''(A) IN GENERAL.—The Board shall prescribe rules by which the Board will evaluate the performance of each qualified nationally recognized statistical rating organization, including rules that require, at a minimum, an annual evaluation of each qualified nationally recognized statistical rating organization.

''(B) CONSIDERATIONS.—The Board, in conducting an evaluation under subparagraph (A), shall consider—

''(i) the results of the annual examination conducted under subsection (p)(3);

''(ii) surveillance of credit ratings conducted by the qualified nationally recognized statistical rating organization after the credit ratings are issued, including—

''(I) how the rated instruments perform;

''(II) the accuracy of the ratings provided by the qualified nationally recognized statistical rating organization as compared to the other nationally recognized statistical rating organizations; and

''(III) the effectiveness of the methodologies used by the qualified nationally recognized statistical rating organization; and

''(iii) any additional factors the Board determines to be relevant.

''(C) REQUEST FOR REEVALUATION.—Subject to rules prescribed by the Board, and not less frequently than once a year, a qualified nationally recognized statistical rating organization may request that the Board conduct an evaluation under this paragraph.

''(D) DISCLOSURE.—The Board shall make the evaluations conducted under this paragraph available to Congress.

''(7) RATING FEES CHARGED TO ISSUERS.—

''(A) LIMITED TO REASONABLE FEES.—A qualified nationally recognized statistical rating organization shall charge an issuer a reasonable fee, as determined by the Commission, for an initial credit rating provided under this section.

''(B) FEES.—Fees may be determined by the qualified national recognized statistical rating organizations unless the Board determines it is necessary to issue rules on fees.

''(8) NO PROHIBITION ON ADDITIONAL RATINGS.—Nothing in this section shall prohibit an issuer from requesting or receiving additional credit ratings with respect to a debt security, if the initial credit rating is provided in accordance with this section.

''(9) NO PROHIBITION ON INDEPENDENT RATINGS OFFERED BY NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

''(A) IN GENERAL.—Nothing in this section shall prohibit a nationally recognized statistical rating organization from independently providing a credit rating with respect to a debt security, if—

''(i) the nationally recognized statistical rating organization does not enter into a contract with the issuer of the debt security to provide the initial credit rating; and

''(ii) the nationally recognized statistical rating organization is not paid by the issuer of the debt security to provide the initial credit rating.

''(B) RULE OF CONSTRUCTION.—For purposes of this section, a credit rating described in

subparagraph (A) may not be construed to be an initial credit rating.

''(10) PUBLIC COMMUNICATIONS.—Any communications made with the public by an issuer with respect to the credit rating of a debt security shall clearly specify whether the credit rating was made by—

''(A) a qualified nationally recognized statistical rating organization selected under paragraph (5)(A) to provide the initial credit rating for such debt security; or

''(B) a nationally recognized statistical rating organization not selected under paragraph (5)(A).

''(11) PROHIBITION ON MISREPRESENTATION.—With respect to a debt security, it shall be unlawful for any person to misrepresent any subsequent credit rating provided for such debt security as an initial credit rating provided for such debt security by a qualified nationally recognized statistical rating organization selected under paragraph (5)(A).

''(12) INITIAL CREDIT RATING REVISION AFTER MATERIAL CHANGE IN CIRCUMSTANCE.—If the Board determines that it is necessary or appropriate in the public interest or for the protection of investors, the Board may issue regulations requiring that an issuer that has received an initial credit rating under this subsection request a revised initial credit rating, using the same method as provided under paragraph (4), each time the issuer experiences a material change in circumstances, as defined by the Board.

''(13) CONFLICTS.—

''(A) MEMBERS OR EMPLOYEES OF THE BOARD.—

''(i) LOAN OF MONEY OR SECURITIES PROHIBITED.—

''(I) IN GENERAL.—A member or employee of the Board shall not accept any loan of money or securities, or anything above nominal value, from any nationally recognized statistical rating organization, issuer, or investor.

''(II) EXCEPTION.—The prohibition in subclause (I) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(ii) EMPLOYMENT NEGOTIATIONS PROHIBITION.—A member or employee of the Board shall not engage in employment negotiations with any nationally recognized statistical rating organization, issuer, or investor, unless the member or employee—

''(I) discloses the negotiations immediately upon initiation of the negotiations; and

''(II) recuses himself from all proceedings concerning the entity involved in the negotiations until termination of negotiations or until termination of his employment by the Board, if an offer of employment is accepted.

''(B) CREDIT ANALYSTS.—

''(i) IN GENERAL.—A credit analyst of a qualified nationally recognized statistical rating organization shall not accept any loan of money or securities, or anything above nominal value, from any issuer or investor.

''(ii) EXCEPTION.—The prohibition described in clause (i) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(14) EVALUATION OF CREDIT RATING AGENCY BOARD.—Not later than 5 years after the date that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings, the Commission shall submit to Congress a report that provides recommendations of—

''(A) the continuation of the Board;

''(B) any modification to the procedures of the Board; and

''(C) modifications to the provisions in this subsection.''.

SA 3809. Mr. INOUYE (for himself, Mr. COCHRAN, Mr. DURBIN, Ms. COLLINS, Mr. BYRD, Mr. HARKIN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1171, strike line 6 and all that follows through page 1187, line 9.

SA 3810. Mr. DORGAN (for himself and Mr. GRASSLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1533, line 5, strike ''Section'' and insert the following:

''(a) IN GENERAL.—The Board of Governors shall disclose to Congress and to the public, with respect to any emergency financial assistance provided during the 5-year period preceding the date of enactment of this Act under the authority of the Board of Governors in the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343)—

''(1) the name of each financial company that received such assistance;

''(2) the value or amount and description of the emergency assistance provided, including loans to investment banks from the Federal Reserve discount lending program or special purpose entities;

''(3) the date on which the financial assistance was provided;

''(4) the terms and conditions for the emergency assistance; and

''(5) a full description of any collateral required by the Board of Governors and secured from the recipients of such emergency assistance.

''(b) PUBLIC DISCLOSURE.—Section''.

SA 3811. Mr. DORGAN (for himself, Mr. FEINGOLD, 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:

On page 29, line 14, strike ''and'' and all that follows through ''annually report'' on line 15 and insert the following:

''(M) identify all financial institutions that have domestic or international (or both) operations or activities of a significant size, scope, nature, scale, concentration, volume, frequency of transactions, or in any other manner or method, resulting or arising from stand alone operations or activities individually, or as a mix or combination of such international operations or activities that may pose a grave threat to the financial stability of the United States; and

''(N) annually report''.

On page 33, strike line 3 and all that follows through page 61, line 12 and insert the following:

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of 50 percent or more of the members then serving, shall determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to this Act, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States or such company has significant international operations or activities.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(F) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of 50 percent of the members then serving, shall determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to this Act, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States, or such company has significant international operations or activities.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and

operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

(F) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company

would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this section should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS FOR COMPANIES WITHOUT SIGNIFICANT INTERNATIONAL OPERATIONS.—

(1) IN GENERAL.—If the Council determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, that does not have significant international operations or activities, may pose a grave threat to the financial stability of the United States, the Council, upon an affirmative vote of 50 percent or more of the Council members then serving, shall require the subject company to take one or more of the actions described in paragraph (2), until such company does not pose a grave threat to the financial stability of the United States.

(2) ACTIONS.—The Council may require an entity described in paragraph (1)—

(A) to terminate one or more activities;

(B) to impose conditions on the manner in which the company conducts one or more activities;

(C) to divest, sell or otherwise transfer assets, operations or off balance sheet items or activities to unaffiliated entities; or

(D) take any combination of the actions described in subparagraphs (A) through (C).

(b) MITIGATORY ACTIONS FOR COMPANIES WITH SIGNIFICANT INTERNATIONAL OPERATIONS.—

(1) IN GENERAL.—If the Council determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, has significant international operations or activities of a size, scope, nature, scale, concentration, volume, frequency of transactions, or in any other manner or method, and would pose a grave threat to the financial stability of the United States, and would, therefore, require international or cross-border resolution in the event of failure, the Council, upon an affirmative vote of 50 percent or more of the Council members then serving, shall require the subject company to take one or more of the actions described in subparagraph (B), until such company's international operations or activities no longer pose such a threat.

(2) ACTIONS.—The Council may require an entity described in paragraph (1)—

(A) to terminate one or more activities;

(B) to impose conditions on the manner in which the company conducts one or more activities;

(C) to divest, sell or otherwise transfer assets, operations or off balance sheet items or activities to unaffiliated entities; or

(D) to take any combination of the actions described in subparagraphs (A) through (C).

(3) INTERNATIONAL RESOLUTION MECHANISM.—Because only a binding comprehensive international resolution mechanism will mitigate the grave threat such a subject company poses to the United States, this requirement shall remain in effect until the Council, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, votes that there is a binding, effective, and comprehensive international resolution mechanism. At such time, all such companies shall be transitioned to regulation under paragraph (1).

(4) INTERNATIONAL COOPERATION.—The Council shall work promptly and urgently with all appropriate countries and international authorities to establish a binding, effective, and comprehensive international resolution mechanism, and shall report to Congress not less than once every 6 months on all activities taken in connection with such effort, including actions taken or not taken by other countries and international organizations. The Council shall designate a Vice Chairperson with the sole responsibility for working with international authorities to establish such a resolution mechanism.

(c) The Council shall determine the appropriate time periods for any actions pursuant to this subsection, but any such time periods shall be as soon as prudently possible, and in no event later than 2 years after such action is ordered.

(d) NOTICE AND HEARING.—

(1) IN GENERAL.—The Council, in consultation with the Board of Governors, shall provide to a company described in subsection (a) or (b) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed mitigatory action. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Council, in consultation with the Board of Governors, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Council shall notify the company of the final decision of the Council, including the results of the vote of the Council, as described in subsection (a) or (b).

(e) FACTORS FOR CONSIDERATION.—The Council and the Board of Governors shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and (b), and in a decision described in subsection (d).

(f) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Council may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle of national treatment and competitive equity.

SA 3812. Mr. HARKIN (for himself, Mr. SCHUMER, and Mr. SANDERS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. FAIR ATM FEES.

(a) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 904(d)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)(3)) is amended—

(1) in subparagraph (A), by striking the subparagraph heading and inserting the following:

''(A) FEE DISCLOSURE.—'' ;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) REGULATION OF FEES.—The regulations prescribed under paragraph (1) shall require any fee charged by an automated teller machine operator for a transaction conducted at that automated teller machine to bear a reasonable relation to the cost of processing the transaction, and in no case shall any such fee exceed $0.50.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective not later than 6 months after the date of enactment of this Act.

(c) RULEMAKING.—The Bureau shall issue such rules as may be necessary to carry out this section, not later than 6 months after the date of enactment of this Act.

SA 3813. Ms. KLOBUCHAR (for herself and Mr. BENNET), 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 1440, after line 21, insert the following:

(c) REQUIREMENTS ON MORTGAGE ORIGINATORS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by striking subsection (j) and inserting the following:

''(j) CONSEQUENCE OF FAILURE TO COMPLY.—Any mortgage made in violation of a provision of this section shall be deemed a failure to deliver the material disclosures required under this title, for the purpose of section 125.''; and

(2) by adding at the end the following:

''(n) REQUIREMENTS FOR MORTGAGE ORIGINATORS.—

''(1) ABILITY TO PAY.—

''(A) IN GENERAL.—No creditor or mortgage broker may make, provide, or arrange for any consumer credit transaction secured by the principal dwelling of a consumer without first verifying the reasonable ability of the consumer to pay the scheduled payments of, as applicable—

''(i) principal;

''(ii) interest;

''(iii) real estate taxes; and

''(iv) homeowner insurance, assessments, and mortgage insurance premiums.

''(B) VARIABLE INTEREST RATE.—In the case of any consumer credit transaction secured by the principal dwelling of a consumer for which the applicable annual percentage rate may vary over the life of the credit, the reasonable ability to pay shall be determined, for purposes of this paragraph, on the basis of a fully indexed rate plus 200 basis points and a repayment schedule which achieves full amortization over the life of the extension of credit.

''(C) VERIFICATION OF CONSUMER INCOME AND FINANCIAL RESOURCES.—

''(i) IN GENERAL.—In the case of any consumer credit transaction secured by the principal dwelling of a consumer, the income and financial resources of the consumer shall be verified for purposes of this paragraph by tax returns, payroll receipts, bank records, or other similarly reliable documents.

''(ii) CONSUMER STATEMENT INSUFFICIENT.—A statement by a consumer of income or financial resources shall not be sufficient to establish the existence of any income or financial resources when verifying the reasonable ability of the consumer to repay any consumer credit transaction secured by the principal dwelling of the consumer for purposes of this paragraph.

''(D) OTHER CRITERIA.—A creditor or mortgage broker may rely on additional criteria other than income and financial resources to establish the reasonable ability of a consumer to repay any consumer credit transaction secured by the principal dwelling of the consumer, to the extent such other criteria are also verified through reasonably reliable methods and documentation.

''(E) EQUITY IN DWELLING NOT TO BE TAKEN INTO ACCOUNT.—The consumer's equity in the principal dwelling that secures or would secure the consumer credit transaction may not be used to establish the ability to make the payments described in subparagraph (A) with respect to such transaction.

''(2) PROHIBITION ON STEERING.—

''(A) IN GENERAL.—In connection with a credit transaction secured by the principal dwelling, a mortgage broker or creditor may not—

''(i) steer, counsel, or direct a consumer to rates, charges, principal amount, or prepayment terms that are more expensive for that which the consumer qualifies; or

''(ii) make, provide, or arrange for any consumer credit transaction secured by the principal dwelling of a consumer that is more expensive than that for which the consumer qualifies.

''(B) DUTIES TO CONSUMERS.—If unable to suggest, offer, or recommend to a consumer a home loan that is not more expensive than that for which the consumer qualifies, a mortgage originator shall—

''(i) based on the information reasonably available and using the skill, care, and diligence reasonably expected for a mortgage originator, originate or otherwise facilitate a suitable home mortgage loan by another creditor to a consumer, if permitted by and in accordance with all otherwise applicable law; or

''(ii) disclose to the consumer—

''(I) that the creditor does not offer a home mortgage loan that is not more expensive than a loan for which the consumer qualifies, but that other creditors may offer such a loan; and

''(II) the reasons that the products and services offered by the mortgage originator are not available to or reasonably advantageous for the consumer.

''(C) PROHIBITED CONDUCT.—In connection with a credit transaction secured by the principal dwelling, a mortgage originator may not—

''(i) mischaracterize the credit history of a consumer or the home loans available to a consumer;

''(ii) mischaracterize or suborn the mischaracterization of the appraised value of the property securing the extension of credit; and

''(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discourage a consumer from seeking a home mortgage loan from another creditor or with another mortgage originator.''.

SA 3814. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

''(e)(1) Each Inspector General of a designated Federal entity may at any time be removed, but only for cause. In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before the Senate Committee on Energy and Natural Resources previously announced for May 6, 2010, at 9:30 a.m., has been rescheduled and will now be held on Tuesday, May 11, 2010, at 10 a.m., in room SR–325 of the Russell Senate Office Building.

The purpose of the hearing is to review issues related to deepwater offshore exploration for petroleum and the accident in the Gulf of Mexico involving the offshore oil rig Deepwater Horizon.

For further information, please contact Linda Lance at (202) 224–7556 or Allyson Anderson at (202) 224–7143 or Abigail Campbell at (202) 224–1219.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on May 4, 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 2''.

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 ''ESEA Reauthorization: Improving America's Secondary Schools'' on Tuesday, May 4, 2010. The hearing will commence at 2 p.m. in room 430 of the Dirksen Senate Office Building.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Crime and Drugs, be authorized to meet during the session of the Senate, on May 4, 2010, at 9:30 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Wall Street Fraud and Fiduciary Duties: Can Jail Time Serve as an Adequate Deterrent for Willful Violations?''

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on May 4, 2010, at 2:30 p.m. to conduct a hearing titled, ''Recruiting and Retaining a Robust Federal Workforce.''

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

COLLECTOR CAR APPRECIATION DAY

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to S. Res. 513.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 513) designating July 9, 2010 as ''Collector Car Appreciation Day'' and recognizing that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. 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, there be no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 513) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 513

Whereas many people in the United States maintain classic automobiles as a pastime and do so with great passion and as a means of individual expression;

Whereas the Senate recognizes the effect that the more than 100-year history of the automobile has had on the economic progress of the Nation and supports wholeheartedly all activities involved in the restoration and exhibition of classic automobiles;

Whereas collection, restoration, and preservation of automobiles is an activity shared across generations and across all segments of society;

Whereas thousands of local car clubs and related businesses have been instrumental in preserving a historic part of the heritage of this Nation by encouraging the restoration and exhibition of such vintage works of art;

Whereas automotive restoration provides well-paying, high-skilled jobs for people in all 50 States; and

Whereas automobiles have provided the inspiration for music, photography, cinema, fashion, and other artistic pursuits that have become part of the popular culture of the United States: Now therefore, be it

Resolved, That the Senate—

(1) designates July 9, 2010, as ''Collector Car Appreciation Day'';

(2) recognizes that the collection and restoration of historic and classic cars is an important part of preserving the technological achievements and cultural heritage of the United States;

(3) encourages the Department of Education, the Department of Transportation, and other Federal agencies to support events and commemorations of ''Collector Car Appreciation Day'', including exhibitions and educational and cultural activities for young people; and

(4) encourages the people of the United States to engage in events and commemorations of ''Collector Car Appreciation Day'' that create opportunities for collector car owners to educate young people on the importance of preserving the cultural heritage of the United States, including through the collection and restoration of collector cars.

Mr. REID. Mr. President, we have had a big day in the Senate. Because of my Republican friends, we have been able to accomplish almost nothing—not quite but almost nothing. I love old cars, and I am glad we are able to pass this important legislation: Collector Car Appreciation Day. Collector Car Appreciation Day.

While people out there are looking for jobs, trying to save their homes, we are doing what the Republicans let us do: Collector Car Appreciation Day. That is the extent of our work because the Republicans have objected to everything we have tried to do on trying to reform Wall Street—for obvious reasons.

We all read the press saying the lobbyists are here lined up with their Gucci shoes and their new suits and a lot of new ties because we are told they are spending millions of dollars a week on these people to stop us from reforming Wall Street.

Now is the time to renew the import ban on all products from Burma for another year.

Let me be clear—I am disappointed that the ban has not moved Burma any closer to national reconciliation and a democratic government.

Indeed, as I have noted, the regime has taken several steps in the wrong direction.

But we have the opportunity to review these sanctions every year.

Last year we passed legislation allowing the sanctions to be renewed, once a year, for up to three more years until 2012.

Simply put, if we fail to renew the import ban, we will reward the military regime for its decades' long record of oppression.

We will reward them for keeping the true leader of Burma, Suu Kyi, behind bars and under house arrest for the better part of 20 years.

We will reward them for forcing the National League for Democracy to close its doors.

We will reward them for 2,100 political prisoners, the use of child soldiers, the persecution of ethnic minorities, the use of rape as an instrument of war, the use of torture, the use of forced labor, and the displacement of civilians.

Indeed, the standards for lifting the sanctions are clear. The regime must make ''substantial and measureable progress'' towards ending violations of internationally recognized human rights; releasing all political prisoners; allowing freedom of speech and press; allowing freedom of association; permitting the peaceful exercise of religion; and bringing to a conclusion an agreement between the SPDC and the National League for Democracy and Burma's ethnic nationalities on the restoration of a democratic government.

By every measure, the regime has failed to even come close to meeting these conditions. So we must act to renew the import ban.

But we cannot act alone.

I urge the United Nations and the international community to follow our lead and put pressure on the regime to abandon this process, release political prisoners, and draft a truly democratic and representative constitution.

I urge my colleagues to support this joint resolution.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 514—CONGRATULATING THE STUDENTS, PARENTS, TEACHERS, AND ADMINISTRATORS OF CHARTER SCHOOLS ACROSS THE UNITED STATES FOR ONGOING CONTRIBUTIONS TO EDUCATION AND SUPPORTING THE IDEALS AND GOALS OF THE 11TH ANNUAL NATIONAL CHARTER SCHOOLS WEEK, TO BE HELD MAY 2 THROUGH MAY 8, 2010

Ms. LANDRIEU (for herself, Mr. ALEXANDER, Mr. BAYH, Mr. BURR, Mr. CARPER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. GREGG, Mr. LIEBERMAN, and Mr. VITTER) submitted the following resolution; which was considered and agreed to:

S. RES. 514

Whereas charter schools deliver high-quality public education and challenge all students to reach their potential;

Whereas charter schools promote innovation and excellence in public education;

Whereas charter schools provide thousands of families with diverse and innovative educational options for their children;

Whereas charter schools are public schools authorized by a designated public entity that respond to the needs of communities, families, and students in the United States, and promote the principles of quality, accountability, choice, and innovation;

Whereas, in exchange for flexibility and autonomy, charter schools are held accountable by their sponsors for improving student achievement and for the financial and other operations of the charter schools;

Whereas 40 States, the District of Columbia, and Guam have passed laws authorizing charter schools;

Whereas 4,956 charter schools are operating nationwide, serving more than 1,600,000 students;

Whereas, in fiscal year 2010 and the 16 previous fiscal years, Congress has provided a total of more than $2,734,370,000 in financial assistance to the charter school movement through grants for planning, startup, implementation, dissemination, and facilities;

Whereas numerous charter schools improve the achievements of students and stimulate improvement in traditional public schools;

Whereas charter schools are required to meet the student achievement accountability requirements under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) in the same manner as traditional public schools;

Whereas charter schools often set higher and additional individual goals than the requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) to ensure that charter schools are of high quality and truly accountable to the public;

Whereas charter schools give parents the freedom to choose public schools, routinely measure parental satisfaction levels, and must prove their ongoing success to parents, policymakers, and the communities served by the charter schools;

Whereas more than 50 percent of charter schools report having a waiting list, and the total number of students on all such waiting lists is enough to fill more than 1,100 average-sized charter schools;

Whereas the President has called for doubling the Federal support for charter schools, including replicating and expanding the highest performing charter models to meet the dramatic demand created by the more than 365,000 children on charter school waiting lists; and

Whereas the 11th annual National Charter Schools Week is to be held May 2, through May 8, 2010: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the students, parents, teachers, and administrators of charter schools across the United States for ongoing contributions to education, the impressive strides made in closing the persistent academic achievement gap in the United States, and improving and strengthening the public school system in the United States;

(2) supports the ideals and goals of the 11th annual National Charter Schools Week, a week-long celebration to be held May 2 through May 8, 2010, in communities throughout the United States; and

(3) encourages the people of the United States to hold appropriate programs, ceremonies, and activities during National Charter Schools Week to demonstrate support for charter schools.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3815. Mr. DORGAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3816. Mr. CHAMBLISS (for himself, Mr. SHELBY, Mr. MCCONNELL, Mr. GREGG, Mr. CRAPO, Mr. JOHANNS, Mr. COCHRAN, Mrs. HUTCHISON, Mr. CORNYN, Mr. ROBERTS, Mr. BENNETT, Mr. VITTER, and Mr. THUNE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3817. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3818. Mr. MENENDEZ (for himself and Mr. MERKLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3819. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3820. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3821. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3822. Mr. REID (for himself and Mr. SHELBY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself

and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3823. Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3824. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3825. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3826. Mr. SHELBY (for himself, Mr. MCCONNELL, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, Mr. JOHANNS, Mrs. HUTCHISON, Mr. VITTER, Mr. BUNNING, Mr. CHAMBLISS, Mr. CORNYN, Mr. BOND, Mr. ENZI, and Mr. ALEXANDER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 3827. Mr. SHELBY (for himself and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 3828. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3829. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3830. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. REID (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3831. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3832. Mr. SESSIONS (for himself, Mr. BUNNING, Mr. DEMINT, Mr. ENSIGN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3833. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3834. Mr. CORKER (for himself, Mr. GREGG, Mr. ISAKSON, and Mr. LEMIEUX) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3835. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3836. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3837. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3838. Mr. BROWN of Massachusetts (for himself, Mrs. SHAHEEN, and Mr. GREGG) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3839. Mr. MCCAIN (for himself, Mrs. SHAHEEN, Mr. GREGG, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3840. Mr. CARDIN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3841. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3842. Mr. NELSON, of Florida (for himself and Mr. BROWN, of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3843. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3844. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3845. Mr. KAUFMAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3846. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3847. Mr. DODD (for Mr. LEAHY (for himself and Mr. CORNYN)) proposed an amendment to the bill S. 3111, to establish the Commission on Freedom of Information Act Processing Delays.

SA 3848. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3849. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3850. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3851. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3852. Mr. DEMINT (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3853. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3854. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3855. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3856. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3857. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3858. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3859. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3815. Mr. DORGAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1533, line 5, strike ''Section'' and insert the following:

''(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Board of Governors shall disclose to Congress and to the public, with respect to any

emergency financial assistance provided during the 5-year period preceding the date of enactment of this Act under the authority of the Board of Governors in the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343)—

''(1) the name of each financial company that received such assistance;

''(2) the value or amount and description of the emergency assistance provided, including loans to investment banks from the Federal Reserve discount lending program or special purpose entities;

''(3) the date on which the financial assistance was provided;

''(4) the terms and conditions for the emergency assistance; and

''(5) a full description of any collateral required by the Board of Governors and secured from the recipients of such emergency assistance.

''(b) PUBLIC DISCLOSURE.—Section''.

SA 3816. Mr. CHAMBLISS (for himself, Mr. SHELBY, Mr. MCCONNELL, Mr. GREGG, Mr. CRAPO, Mr. JOHANNS, Mr. COCHRAN, Mrs. HUTCHISON, Mr. CORNYN, Mr. ROBERTS, Mr. BENNETT, Mr. VITTER, and Mr. THUNE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title VII and insert the following:

TITLE VII—OVER-THE-COUNTER DERIVATIVES MARKET

SEC. 701. SHORT TITLE; PURPOSES.

(a) SHORT TITLE.—This title may be cited as the ''Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010''.

(b) PURPOSES.—The purposes of this title are—

(1) to improve regulators' access to information by establishing well-regulated repositories for the reporting of all swaps;

(2) to repeal the statutory provisions that prohibit regulators from overseeing the over-the-counter swaps markets;

(3) to increase the number of derivatives transactions that are centrally cleared;

(4) to ensure that corporate end users can continue to hedge their unique business risks through customized derivatives;

(5) to prevent concentration of inadequately hedged risks in individual firms or central clearinghouses; and

(6) to provide investors and other swap market participants with information about transactions and positions in order to help them mark existing swap positions to market, make informed decisions before executing future transactions, and assess the quality of transactions they have executed.

Subtitle A—Regulatory Authority

SEC. 711. DEFINITIONS.

In this subtitle, the terms ''prudential regulator'', ''swap'', ''swap participant'', ''swap data repository'', ''associated person of a swap participant'', ''eligible contract participant'', ''non-security-based swap execution facility'', ''broad-based security index'', ''non-security-based swap'', ''non-security-based swap data repository'', ''security-based swap'', and ''security-based swap data repository'' have the meanings given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

SEC. 712. REVIEW OF REGULATORY AUTHORITY.

(a) CONSULTATION.—

(1) RULES; ORDERS.—In developing and promulgating rules or orders pursuant to this subsection—

(A) the Commodity Futures Trading Commission shall consider the views of—

(i) the Securities and Exchange Commission; and

(ii) the prudential regulators; and

(B) the Securities and Exchange Commission shall consider the views of—

(i) the Commodity Futures Trading Commission; and

(ii) the prudential regulators.

(2) TREATMENT OF SIMILAR PRODUCTS AND ENTITIES.—

(A) IN GENERAL.—In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) EFFECT.—Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

(b) GLOBAL RULEMAKING TIMEFRAME.—Unless otherwise provided in a particular provision of this title, or an amendment made by this title, the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall promulgate rules and regulations required of each Commission under this title or an amendment made by this title not later than 1 year after the date of enactment of this Act.

(c) REGULATORY AUTHORITY.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall prescribe such regulations as may be necessary to carry out the provisions of this title.

SEC. 713. DETERMINATION OF STATUS OF NEW PRODUCTS.

(a) IN GENERAL.—If the Securities and Exchange Commission and the Commodity Futures Trading Commission are unable to determine whether any new product is a security, future, option on a future, security-based swap, or non-security-based swap, either agency may petition the Financial Stability Oversight Council (referred to in this Act as the ''Council'') for a binding determination of the status of the new product as a security, future, option on a future, security-based swap, or non-security-based swap.

(b) DEADLINE FOR DETERMINATION.—The Council shall issue its determination within 60 days after the date of receipt of a petition described in subsection (a).

SEC. 714. STUDY ON ENFORCEMENT CONSISTENCY.

(a) STUDY.—The Council shall conduct a study to compare the nature and amount of penalties and other sanctions imposed for violations of this title and any regulations adopted thereunder.

(b) REPORT.—Not later than 4 years after the enactment of this Act, the Council shall submit a report to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives that sets forth—

(1) the findings of the study required under subsection (a); and

(2) recommendations for statutory changes to enhance the consistency with which this Act and the regulations adopted thereunder are enforced.

SEC. 715. JURISDICTION.

(a) The provisions of this title shall not apply to activities outside the United States, unless those activities—

(1) have a direct and significant connection with activities in, or an effect on, United States commerce; or

(2) contravene such rules or regulations as the Securities and Exchange Commission and Commodity Futures Trading Commission may jointly, by rule or regulation, prescribe as necessary or appropriate to prevent the evasion of any provision of this Act.

(b) The Commodity Futures Trading Commission and the Securities and Exchange Commission may exempt a person from some or all requirements of this title, if they jointly determine by rule or order that the person is subject to comparable requirements as part of comprehensive supervision and regulation on a consolidated basis by an appropriate regulatory authority in a foreign jurisdiction and such regulatory authority has entered into an information sharing agreement with the Commodity Futures Trading Commission and the Securities and Exchange Commission.

SEC. 716. INTERNATIONAL HARMONIZATION.

(a) INTERNATIONAL STANDARDS.—The Department of the Treasury shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swaps, swap market participants, swap data repositories, and central clearing entities.

(b) INTERNATIONAL INFORMATION-SHARING AGREEMENTS.—Nothing in subsection (a) shall be construed to prohibit the Commodity Futures Trading Commission and the Securities and Exchange Commission, from entering into information-sharing arrangements with foreign regulators as may be deemed to be necessary in furtherance of the purposes of this title.

SEC. 717. CONFIDENTIALITY OF INFORMATION.

(a) CONFIDENTIALITY OF INFORMATION PROVIDED TO MEMBERS OF CONGRESS.—The Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all confidential information (including information covered by sections 1905 and 1906 of title 18, United States Code,) that is furnished to the committees and Members of Congress under this title. Such procedures shall be established in consultation with the appropriate regulatory agencies.

(b) CONFIDENTIALITY OF INFORMATION PROVIDED TO REGULATORS.—No non-public information provided to or obtained by the Commodity Futures Trading Commission, the Securities and Exchange Commission, any prudential regulator, the Financial Stability Oversight Council, or the Department of Justice under this title may be disclosed to any other person. Nothing in this section shall authorize the Commodity Futures Trading Commission, the Securities and Exchange Commission, any prudential regulator, the Financial Stability Oversight Council, or the Department of Justice to withhold information from Congress, or prevent the Commodity Futures Trading Commission, the Securities and Exchange Commission, any prudential regulator, the Financial Stability Oversight Council, or the Department of Justice from complying with a request for information from any other Federal department or agency.

SEC. 718. COMMON FRAMEWORK FOR CLEARINGHOUSE RISK MANAGEMENT.

(a) COMMON FRAMEWORK FOR RISK MANAGEMENT.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall consult with the Federal Reserve Board of Governors to jointly develop risk management supervision programs for derivatives clearing organizations and clearing agencies (''clearinghouses''). Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations for—

(1) improving consistency in the clearinghouse oversight programs of the Securities and Exchange Commission and the Commodity Futures Trading Commission;

(2) promoting robust risk management by clearinghouses;

(3) promoting robust risk management oversight by regulators of clearinghouses; and

(4) improving regulators' ability to monitor the potential effects of clearinghouse risk management on the stability of the financial system of the United States.

(b) DUALLY REGISTERED PERSONS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall develop and, subject to approval by the Council, implement an oversight plan with respect to each person that is subject to registration as—

(A) both a derivatives clearing organization and a clearing agency; or

(B) both a non-security-based swap data repository and security-based swap data repository.

(2) CONTENTS OF PLANS.—Each plan shall identify recordkeeping, reporting and other requirements imposed on the person by the Commodity Futures Trading Commission and the Securities and Exchange Commission that are inconsistent, an approach for eliminating inconsistencies where appropriate, and ways in which the two commissions can coordinate their inspection and examination of the person. Such plan, if appropriate, may designate one regulator as the person's primary regulator.

(3) SUBMISSION OF PLANS.—The Commissions shall submit each plan, including any recommended legislative changes to facilitate the plan, to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives on or before 1 year after the date on which the person becomes dually registered.

SEC. 719. RECOMMENDATIONS FOR CHANGES TO PORTFOLIO MARGINING LAWS.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the prudential regulators shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives recommendations for legislative changes to the Federal laws to facilitate—

(1) the portfolio margining of securities and commodity futures and options, commodity options, swaps, and other financial instrument positions;

(2) the portability of customer swap positions and associated margin upon the insolvency of a clearing participant; and

(3) harmonization of the insolvency laws to provide for uniform treatment across similar entities, regardless of whether they are registered with or regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

SEC. 720. ABUSIVE SWAPS.

The Council may, by rule or order—

(1) collect information as may be necessary concerning the markets for any types of swaps; and

(2) issue a report with respect to any types of swaps that the Council determines to be detrimental to the financial system stability of the United States.

Subtitle B—Regulation Non-Security-Based of Swap Markets

SEC. 721. DEFINITIONS.

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (2), (3) through (17), (18) through (23), (24) through (28), (29), (30), (31) through (33), and (34) as paragraphs (5), (8) through (22), (26) through (31), (34) through (38), (40), (41), (43) through (45), and (49), respectively;

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

''(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

''(3) ASSOCIATED PERSON OF A SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'associated person of a swap participant' means—

''(i) any partner, officer, director, or branch manager of a swap participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a swap participant);

''(ii) any person that directly or indirectly controls, is controlled by, or is under common control with, a swap participant; and

''(iii) any employee of a swap participant.

''(B) EXCLUSION.—Other than for purposes of section 4s(b)(6), the term 'associated person of a swap participant' does not include any person associated with a swap participant the functions of which are solely clerical or ministerial.

''(4) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.'';

(3) by inserting after paragraph (5) (as redesignated by paragraph (1)) the following:

''(6) BROAD-BASED SECURITY INDEX.—The term 'broad-based security index' means an index that—

''(A) is not a narrow-based security index, as defined in this section; or

''(B) the Commission and the Securities and Exchange Commission have jointly determined should not be treated as a narrow-based security index.

''(7) CLEARED SWAP.—The term 'cleared swap' means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission or a clearing agency regulated with the Securities and Exchange Commission.'';

(4) in paragraph (10) (as redesignated by paragraph (1)), by inserting ''security futures product, or non-security-based swap'' after ''facility,'';

(5) in paragraph (11)(A)(i)(I) (as redesignated by paragraph (1)), by striking ''made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility'' and inserting '', security futures product, or non-security-based swap'';

(6) in paragraph (16) (as redesignated by paragraph (1)) in subparagraph (A), in the matter preceding clause (i), by striking ''paragraph (12)(A)'' and inserting ''paragraph (17)(A)'';

(7) in paragraph (17) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) in the matter following clause (vii)(III)—

(I) by striking ''section 1a (11)(A)'' and inserting ''paragraph (16)(A)''; and

(II) by striking ''$25,000,000'' and inserting ''$50,000,000''; and

(ii) in clause (xi), in the matter preceding subclause (I), by striking ''total assets in an amount'' and inserting ''amounts invested on a discretionary basis, the aggregate of which is'';

(8) in paragraph (21) (as redesignated by paragraph (1)), by inserting ''security futures product, or non-security-based swap'' after ''of any contract market or derivatives transaction execution facility'';

(9) in paragraph (22) (as redesignated by paragraph (1)), by inserting '', security futures product, or non-security-based swap'' after ''of any contract market or derivatives transaction execution facility'';

(10) by inserting after paragraph (22) (as redesignated by paragraph (1)) the following:

''(23) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that—

''(A) occurs at a later time on the trade date or on a specific future date; and

''(B) solely involves—

''(i) the exchange of 2 different currencies at a fixed rate agreed to at the inception of the contract; or

''(ii) 1 or more payments determined by reference to the rate of exchange of 2 different currencies, or the movement thereof in accordance with a method agreed to at the inception of a contract.

''(24) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that does not involve any payment or delivery based on the level of interest rates, the price of any commodity other than a currency, or the price of, or default under, any debt or equity security or loan and solely involves—

''(A) the exchange of 2 different currencies at a fixed rate agreed to at the inception of the contract that occurs at a later time on the trade date or on a specific future date and a reverse exchange of the same currencies at a date further in the future; or

''(B) 1 or more payments determined by reference to the rate of exchange of 2 different currencies, or the movement thereof in accordance with a method agreed to at the inception of the contract, at a later time on the trade date or on a specific future date and a payment at a date further in the future that is determined by reference to the rate of exchange of the same currencies or the movement thereof in accordance with a method agreed to at the inception of the contract.

''(25) FOREIGN EXCHANGE OPTION.—The term 'foreign exchange option' means a transaction, including a put or a call, that solely entitles the buyer, upon exercise, on a specified date or upon a specified event—

''(A) to purchase from the seller a specified quantity or 1 or more currencies and to sell to the seller a specified quantity of 1 or more currencies; or

''(B) to require the seller to make a payment determined by reference to the exchange rate of such currencies or the movement thereof in accordance with a method agreed to at the inception of the contract.'';

(11) in paragraph (28) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) by inserting '', security futures product, or non-security-based swap'' after ''facility''; and

(ii) by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) EXCLUSION.—The term 'futures commission merchant' does not include a person who acts only as a counterparty for non-security-based swaps with eligible contract participants and who does not otherwise engage in the activities of a futures commission merchant.'';

(12) in paragraph (30) (as redesignated by paragraph (1)), in subparagraph (B), by striking ''state'' and inserting ''State'';

(13) in paragraph (31) (as redesignated by paragraph (1)), by inserting ''security futures product, or non-security-based swap,'' after ''facility'';

(14) by inserting after paragraph (31) (as redesignated by paragraph (1)) the following:

''(32) SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'swap participant' means any person who—

''(i) is engaged in the business of purchasing or selling swaps for such person's own account or for others;

''(ii) is making a market in swaps; or

''(iii) engages in transactions in swaps and is not a swap end user.

''(B) EXCEPTIONS.—A person shall not be deemed to be a swap participant pursuant to subparagraph (A)—

''(i) solely because that person buys or sells swaps for such person's own account or the account of any person under common control with such person, either individually or in a fiduciary capacity, but not as a part of a regular business; or

''(ii) if that person engages in a de minimis quantity of activities described in subparagraph (A) in connection with transactions with or on behalf of customers.

''(33) SWAP END USER.—

''(A) IN GENERAL.—The term 'swap end user' means any person the gross aggregate notional value of whose outstanding swaps that do not qualify as bona fide hedging swap transactions—

''(i) is 5 percent or less of the gross aggregate notional value of the person's outstanding swaps; or

''(ii) is 7 percent or less of the gross aggregate notional value of the person's outstanding swaps and security-based swaps, provided that the aggregate notional value of the person's outstanding swaps and security-based swaps that do not qualify as bona fide hedging transactions and were executed in connection with the person's commercial transactions is 2 percent or more of the gross aggregate notional value of the person's outstanding swaps.

''(B) ENUMERATED SWAP END USERS.—The term 'swap end user' shall include—

''(i) an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); and

''(ii) an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)) that is subject to title I of that Act (29 U.S.C. 1001 et seq.).

''(C) ENUMERATED EXCEPTIONS.—The term 'swap end user' shall not include—

''(i) entities defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)); or

''(ii) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act o f 1940 (15 U.S.C. 80a–3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a–3(c)), and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets.

''(D) AVAILABILITY OF INFORMATION.—Upon written request from the Commission, the Securities and Exchange Commission, or the Financial Stability Oversight Council, a swap end user must provide information regarding the swaps that it holds. This information may not be disclosed to any other person. Nothing in this subsection shall authorize the Commission, the Securities and Exchange Commission, or the Financial Stability Oversight Council to withhold information from Congress, or prevent the Commission, the Securities and Exchange Commission, or the Financial Stability Oversight Council from complying with a request for information from any other Federal department or agency or foreign government with which the Commission, the Securities and Exchange Commission, or the Financial Stability Oversight Council has an information sharing arrangement that requests the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

''(33A) BONA FIDE HEDGING SWAP TRANSACTION.—

''(A) IN GENERAL.—The term 'bona fide hedging swap transaction' means a purchase or sale by any person of a bona fide swap that is economically appropriate to the reduction or offsetting of risks arising from—

''(i) the potential change in the value of assets which such person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

''(ii) the potential change in the cost or value of liabilities which such person owns or anticipates incurring; or

''(iii) the potential change in the cost or value of goods or services which such person provides, purchases, or anticipates providing or purchasing.

''(B) PREVENTION OF EVASION.—A swap transaction that is undertaken solely for the purpose of avoiding registration as a swap participant shall not constitute a bona fide hedging swap transaction.'';

(15) by inserting after paragraph (38) (as redesignated by paragraph (1)) the following:

''(39) PRUDENTIAL REGULATOR.—The term 'prudential regulator' means—

''(A) the Office of the Comptroller of the Currency, in the case of—

''(i) any national banking association;

''(ii) any Federal branch or agency of a foreign bank; or

''(iii) any Federal savings association;

''(B) the Federal Deposit Insurance Corporation, in the case of—

''(i) any insured State bank;

''(ii) any foreign bank having an insured branch; or

''(iii) any State savings association;

''(C) the Board of Governors of the Federal Reserve System, in the case of—

''(i) any noninsured State member bank;

''(ii) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act (12 U.S.C. 221 et seq.) which is made applicable under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.);

''(iii) any foreign bank which does not operate an insured branch;

''(iv) any agency or commercial lending company other than a Federal agency; or

''(v) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1464 et seq.);

''(D) the Federal Housing Finance Agency, in the case of a swap participant that is a regulated entity (as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20))); and

''(E) the Farm Credit Administration, in the case of a swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).'';

(16) in paragraph (40) (as redesignated by paragraph (1))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (F), respectively;

(C) in subparagraph (C) (as so redesignated), by striking ''and'';

(D) by inserting after subparagraph (C) (as so redesignated) the following:

''(D) a non-security-based swap execution facility registered under section 5h;

''(E) a non-security-based swap data repository; and'';

(17) by inserting after paragraph (41) (as redesignated by paragraph (1)) the following:

''(42) SECURITY-BASED SWAP.—The term 'security-based swap' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

''(42A) NON-SECURITY-BASED SWAP.—The term 'non-security-based swap' means any swap that is not a security-based swap.'';

(18) in paragraph (45) (as redesignated by paragraph (1)), by striking ''subject to section 2(h)(7)'' and inserting ''subject to section 2(h)(5)'';

(19) by inserting after paragraph (45) (as redesignated by paragraph (1)) the following:

''(46) SWAP.—

''(A) IN GENERAL.—The term 'swap' means any agreement, contract, or transaction that—

''(i) is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

''(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

''(I) an interest rate swap;

''(II) a rate floor;

''(III) a rate cap;

''(IV) a rate collar;

''(V) a cross-currency rate swap;
''(VI) a basis swap;
''(VII) a currency swap;
''(VIII) a foreign exchange swap;
''(IX) a total return swap;
''(X) a broad-based security index swap;
''(XI) an equity index swap;
''(XII) an equity swap;
''(XIII) a debt index swap;
''(XIV) a debt swap;
''(XV) a credit spread;
''(XVI) a credit default swap;
''(XVII) a credit swap;
''(XVIII) a weather swap;
''(XIX) an energy swap;
''(XX) a metal swap;
''(XXI) an agricultural swap;
''(XXII) an emissions swap; and
''(XXIII) a commodity swap;

''(iv) provides for the purchase or sale, on a fixed, contingent, or variable basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind;

''(v) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

''(vi) is any combination or permutation of, or option on, any agreement, contract, or transaction described in clauses (i) through (v).

''(B) EXCLUSIONS.—The term 'swap' does not include—

''(i) any contract of sale of a commodity for future delivery traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

''(ii) any purchase or sale of a nonfinancial commodity for deferred or delayed shipment or delivery, so long as the transaction provides for physical delivery and is undertaken as part of, or in contemplation of, commercial or merchandising activities;

''(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based, in whole or in part, on the value thereof, whether physically or cash settled, unless such agreement, contract, or transaction predicates such purchase or sale (or a net cash payment in lieu thereof) on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of 1 or more reference entities;

''(iv) any agreement, contract, or transaction that is executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

''(v) any purchase or sale of 1 or more securities on a non-contingent basis for deferred or delayed delivery;

''(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities (or a net cash payment in lieu thereof) on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale (or a net cash payment in lieu thereof) on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of 1 or more reference entities;

''(vii) any agreement, contract, or transaction for the purchase or sale, on an immediate settlement basis within the relevant regular way settlement cycle, of any currency, commodity, security, instrument of indebtedness, financial instrument, or property of any kind, or any interest therein;

''(viii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or paragraph (10) of this subsection, or that would be a 'swap' pursuant to section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) solely as a result of bearing a variable rate of return;

''(ix) any agreement, contract, or transaction that is—

''(I) based on, or references, a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of such security;

''(x) any security futures product;

''(xi) any agreement, contract, or transaction that is—

''(I) predominantly a banking product as provided in section 405 of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455);

''(II) not marketed or sold as an alternative to a swap; and

''(III) issued or sold by a bank as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

''(xii) any hybrid instrument that is predominantly a security as provided in section 2(f) as in effect on the day before the date of enactment of this paragraph;

''(xiii)(I) any identified banking product specified in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c(a)), that is—

''(aa) not marketed or sold as an alternative to a swap, and

''(bb) issued or sold by a bank, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); or

''(II) any agreement, contract, or transaction executed in conjunction with an identified banking product described in subclause (I), between a bank and a borrower that is not an eligible contract participant to convert the variable rate interest cost of debt to a fixed rate interest cost or vice versa, or to limit the maximum interest cost of such debt;

''(xiv) any mortgage or mortgage purchase commitment, or any sale of installment loan contracts or receivables, if such product or instrument is not marketed or sold as an alternative to a swap;

''(xv) any contract, agreement or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank or insurance company for the benefit of any individual or commingled fund available as an investment in a defined contribution plan (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)) or a qualified tuition program (as defined in section 529 of the Internal Revenue Code of 1986 (26 U.S.C. 529));

''(xvi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government, a foreign central bank, or a foreign government;

''(xvii) any agreement, contract, or transaction for the performance of services;

''(xviii) any agreement, contract, or transaction that is commercial in nature or employment-related, that is not marketed as a swap, and that would otherwise be a 'swap' pursuant to subparagraph (A) solely as a result of an incidental price, compensation, or rate escalation clause;

''(xix) any agreement, contract, or transaction—

''(I) under which a payment or performance is dependent on the occurrence, non-occurrence, or the extent of the occurrence of a contingency beyond the direct control of the parties to the agreement, contract, or transaction and which conditions such payment or performance obligation on the incurrence of a loss arising from such contingency; and

''(II) that is an insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation that is subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or territory of the United States or the District of Columbia, unless such agreement, contract, or transaction predicates such purchase or sale (or a net cash payment in lieu thereof) on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of one or more reference entities;

''(xx) any agreement, contract, or transaction that the Commission, jointly with the Securities and Exchange Commission, determines, by rule or order and consistent with the purposes of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010, should be excluded from the definition of swap.

''(47) NON-SECURITY-BASED SWAP DATA REPOSITORY.—The term 'non-security-based swap data repository' means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, non-security-based swaps entered into by third parties.

''(48) NON-SECURITY-BASED SWAP EXECUTION FACILITY.—The term 'non-security-based swap execution facility' means a facility in which multiple participants have the ability to execute or trade non-security-based swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, or confirmation facility, that—

''(A) facilitates the execution of non-security-based swaps between persons; and

''(B) is not a designated contract market.''; and

(20) in paragraph (49) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking ''partipants'' and inserting ''participants''.

(b) CONFORMING AMENDMENTS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) an item (cc)—

(i) in subitem (AA), by striking ''section 1a(20)'' and inserting ''section 1a''; and

(ii) in subitem (BB), by striking ''section 1a(20)'' and inserting ''section 1a''; and

(B) in item (dd), by striking ''section 1a(12)(A)(ii)'' and inserting ''section 1a(17)(A)(ii)''.

(2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking ''section 1a(6)'' and inserting ''section 1a''.

(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o–1(a)(1)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1(a)) is amended, in the matter preceding paragraph (1), by striking ''section 1a(9)'' and inserting ''section 1a''.

(7) Section 5c(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(8) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended—

(A) in subclause (I), by striking ''section 1a(12)(B)(ii)'' and inserting ''section 1a(17)(B)(ii)''; and

(B) in subclause (II), by striking ''section 1a(12)'' and inserting ''section 1a(17)''.

(9) The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) in section 402—

(i) in subsection (a)(7), by striking ''section 1a(20)'' and inserting ''section 1a'';

(ii) in subsection (b)(2), by striking ''section 1a(12)'' and inserting ''section 1a'';

(iii) in subsection (c), by striking ''section 1a(4)'' and inserting ''section 1a''; and

(iv) in subsection (d)—

(I) in the matter preceding paragraph (1), by striking ''section 1a(4)'' and inserting ''section 1a(9)'';

(II) in paragraph (1)—

(aa) in subparagraph (A), by striking ''section 1a(12)'' and inserting ''section 1a''; and

(bb) in subparagraph (B), by striking ''section 1a(33)'' and inserting ''section 1a'';

(III) in paragraph (2)—

(aa) in subparagraph (A), by striking ''section 1a(10)'' and inserting ''section 1a'';

(bb) in subparagraph (B), by striking ''section 1a(12)(B)(ii)'' and inserting ''section 1a(18)(B)(ii)'';

(cc) in subparagraph (C), by striking ''section 1a(12)'' and inserting ''section 1a(17)''; and

(dd) in subparagraph (D), by striking ''section 1a(13)'' and inserting ''section 1a''; and

(B) in section 404(1) by striking ''section 1a(4)'' and inserting ''section 1a''.

(c) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—

(1) PETITION.—Not later than 60 days after the date of enactment of this Act, a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

(2) TEMPORARY ALLOWANCE TO OPERATE UNDER SECTION 2(h).—The Commodity Futures Trading Commission—

(A) shall consider any petition submitted under subsection (a) in a prompt manner; and

(B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.

(d) AGRICULTURAL SWAPS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no person shall offer to enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).

(2) EXCEPTION.—Notwithstanding paragraph (1), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

SEC. 722. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended in the first sentence—

(1) by inserting ''the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010 (including an amendment made by that Act) and'' after ''otherwise provided in'';

(2) by striking ''(c) through (i) of this section'' and inserting ''(c) and (f)'';

(3) by striking ''contracts of sale'' and inserting ''non-security-based swaps or contracts of sale''; and

(4) by striking ''or derivatives transaction execution facility registered pursuant to section 5 or 5a'' and inserting ''pursuant to section 5''.

(b) REGULATION OF SWAPS UNDER FEDERAL AND STATE LAW.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

''(h) REGULATION OF SWAPS AS INSURANCE UNDER STATE LAW.—A swap—

''(1) shall not be considered to be insurance; and

''(2) may not be regulated as an insurance contract under the law of any State.''.

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

''(ii) a non-security-based swap; or''.

(d) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:

''(i) APPLICABILITY.—The swap-related provisions of this Act that were enacted by the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

''(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

''(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010.''.

SEC. 723. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i) as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

''(d) SWAPS.—Nothing in this Act (other than subparagraphs (A) and (B) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(e), 2(h), 4(c), 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2) and (f) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities and Commission registrants) governs or applies to a swap.

''(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a non-security-based swap unless the non-security-based swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.''.

(3) MANDATORY CLEARING OF NON-SECURITY-BASED SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

''(h) CLEARING REQUIREMENT.—

''(1) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall, jointly with the Securities and Exchange Commission and the Federal Reserve Board of Governors, adopt rules to establish criteria for determining that a swap or any group, category, type, or class of swap is required to be cleared.

''(B) FACTORS.—In carrying out subparagraph (A), the following factors shall be considered:

''(i) Whether 1 or more derivatives clearing organizations or clearing agencies accepts the swap or group, category, type, or class of swap for clearing.

''(ii) Whether the swap or group, category, type, or class of swap is traded pursuant to standard documentation and terms.

''(iii) The liquidity of the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof.

''(iv) The ability to value the swap group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices.

''(v) The size of the market for the swap or group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing.

''(vi) Whether a clearing mandate would mitigate risk to the financial system or whether it would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency.

''(vii) Such other factors as the Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors jointly may determine are relevant.

''(C) NON-SECURITY-BASED SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

''(i) shall review each non-security-based swap, or any group, category, type, or class of non-security-based swap that is currently listed for clearing and those which a derivatives clearing organization notifies the Commission that the derivatives clearing organization plans to list for clearing after the date of enactment of this subsection;

''(ii) may require, pursuant to the rules adopted under clause (i) and through notice-and-comment rulemaking, that a particular non-security-based swap, group, category, type, or class of non-security-based swap must be cleared if—

''(I) both counterparties are swap participants;

''(II) the transaction was entered into after the later of the date of publication of the rules adopted under subparagraph (A) in the Federal Register or the effective date of the requirement; and

''(III) one counterparty directly or indirectly controls, is controlled by, or is under common control with the other counterparty, provided, however, that the Commission, jointly with the Financial Stability Oversight Council, may determine, by rule or order, that transactions between certain parties under common control are subject to any requirement to clear under clause (ii); and

''(iii) shall rely on economic analysis provided by economists of the Commission in making any determination under clause (ii), which economic analysis may refer to any peer-reviewed or other relevant literature conducted by independent researchers.

''(D) EFFECT.—

''(i) IN GENERAL.—Nothing in this paragraph affects the ability of a derivatives clearing organization to list for permissive clearing any swap, or group, category, type, or class of swap.

''(ii) PROHIBITION.—The Commission shall not compel a derivatives clearing organization to list a swap, group, category, type, or class of swap for clearing if the derivatives clearing organization determines that the swap, group, category, type, or class of swap would adversely impact its business operations, impair the financial integrity of the derivatives clearing organization, or pose a threat to the financial stability of the United States.

''(E) PREVENTION OF EVASION.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under subparagraph (C). In issuing such rules or interpretations, the Commission shall consider—

''(i) the extent to which the terms of the non-security-based swap, group, category, type, or class of non-security-based swap are similar to the terms of other non-security-based swaps, groups, categories, types, or classes of non-security-based swap that are required to be cleared by swap participants under subparagraph (C); and

''(ii) whether there is an economic purpose for any differences in the terms of the non-security-based swap or group, category, type, or class of non-security-based swap that are required to be cleared by swap participants under subparagraph (C).

''(F) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, rescind a requirement imposed under subparagraph (C) with respect to a non-security-based swap, group, category, type, or class of non-security-based swap.

''(G) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission use its authority under subparagraph (C) to require swap participants to clear a particular non-security-based swap, group, category, type, or class of non-security-based swap or to use its authority under subparagraph (F) to rescind a requirement for non-security-based swap participants to clear a particular non-security-based swap, group, category, type, or class of non-security-based swap.

''(H) OPTION TO CLEAR FOR COUNTERPARTIES THAT ARE NOT SWAP PARTICIPANTS.—Before entering into a non-security-based swap transaction, any counterparty that is not a swap participant may elect to clear a non-security-based swap that is subject to a clearing requirement under subparagraph (C). If such counterparty elects to clear, it shall have the sole right to select the derivatives clearing organization or clearing agency at which the non-security-based swap will be cleared.

''(I) FOREIGN EXCHANGE FORWARDS, SWAPS, AND OPTIONS.—Foreign exchange forwards, swaps, and options shall not be subject to a clearing requirement under subparagraph (C) unless the Department of the Treasury and the Board of Governors determine that such a requirement is appropriate after taking into consideration whether there exists an effective settlement system for such foreign exchange forwards, swaps, and options and any other factors that the Department of the Treasury and the Board of Governors deem to be relevant.''.

SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREATMENT.

(a) SEGREGATION REQUIREMENTS FOR CLEARED SWAPS.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by adding at the end the following:

''(f) SWAPS.—

''(1) CLEARED SWAPS.—

''(A) SEGREGATION REQUIRED.—A futures commission merchant or a swap participant shall treat and deal with all money, securities, and property of any swap customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the swap customer as the result of such a swap) as belonging to the swap customer.

''(B) COMMINGLING PROHIBITED.—Money, securities, and property of a swap customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or the swap participant or be used to margin, secure, or guarantee any trades or contracts of any swap customer or person other than the person for whom the same are held.

''(2) EXCEPTIONS.—

''(A) USE OF FUNDS.—

''(i) IN GENERAL.—Notwithstanding paragraph (1), money, securities, and property of a swap customer of a futures commission merchant or a swap participant described in paragraph (1) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a derivatives clearing organization.

''(ii) WITHDRAWAL.—Notwithstanding paragraph (1), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

''(B) COMMISSION ACTION.—Notwithstanding paragraph (1), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swap customer of a futures commission merchant or a swap participant described in paragraph (1) may be commingled and deposited as provided in this section with any other money, securities, or property received by the futures commission merchant or swap participant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swap customer of the futures commission merchant.

''(3) PERMITTED INVESTMENTS.—Money described in paragraph (1) may be invested in obligations of the United States or in any other investment that has minimal credit, market, and liquidity risks that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

''(4) COMMODITY CONTRACT.—A non-security-based swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761 of title 11, United States Code, with regard to all money, securities, and property of any swap customer received by a futures commission merchant, a swap participant, or a derivatives clearing organization to margin, guarantee, or secure the non-security-based swap (including money, securities, or property accruing to the customer as the result of the swap).

''(5) PROHIBITION.—It shall be unlawful for any person, including any derivatives clearing organization and any depository, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (1) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant, a swap participant or any person other than the swap customer of the futures commission merchant or swap participant.''.

(b) BANKRUPTCY TREATMENT OF CLEARED NON-SECURITY-BASED SWAPS.—Section 761 of title 11, United States Code, is amended—

(1) in paragraph (4), by striking subparagraph (F) and inserting the following:

''(F)(i) any other contract, option, agreement, or transaction that is similar to a contract, option, agreement, or transaction referred to in this paragraph; and

''(ii) with respect to a futures commission merchant, a swap participant, or a clearing organization, any other contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization''; and

(2) in paragraph (9)(A)(i), by striking ''the commodity futures account'' and inserting ''a commodity contract account''.

(c) SEGREGATION REQUIREMENTS FOR UNCLEARED NON-SECURITY-BASED SWAPS.—Section 4s of the Commodity Exchange Act (as added by section 729) is amended by adding at the end the following:

''(l) SEGREGATION REQUIREMENTS FOR INITIAL MARGIN.—

''(1) SEGREGATION OF INITIAL MARGIN.—

''(A) NOTIFICATION OF RIGHT TO SEGREGATE.—A swap participant shall notify its counterparty before entering into a non-security-based swap transaction of the counterparty's right to require segregation of the funds or other property supplied as initial margin for the purpose of margining, guaranteeing, or securing the obligations of the counterparty.

''(B) SEGREGATION AND MAINTENANCE OF FUNDS.—At the request, made before entering into a non-security-based swap transaction, of a counterparty that provides funds or other property as initial margin to a swap participant for the purpose of margining, guaranteeing, or securing the obligations of the counterparty, the swap participant shall—

''(i) segregate the funds or other property for the benefit of the counterparty; and

''(ii) in accordance with such rules and regulations as the Commission may promulgate jointly with the Securities and Exchange Commission, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap participant.

''(C) NOTIFICATION OF EXCESS VARIATION MARGIN.—Pursuant to rules or regulations adopted by the Commission, a swap participant who received funds or other property shall notify any counterparty who provided such funds or other property if the swap participant is holding excess net variation margin from that counterparty.

''(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

''(A) apply only to a non-security-based swap between a counterparty and a swap participant that is not submitted for clearing to a derivatives clearing organization; and

''(B)(i) not apply to variation margin payments; and

''(ii) not preclude any commercial arrangement regarding—

''(I) the investment of segregated funds or other property that may only be invested in

such investments as the Commission may permit by rule or regulation; and

''(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

''(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—The segregated account described in paragraph (1), if requested by the counterparty, may be—

''(A) carried by an independent third-party custodian; and

''(B) designated as a segregated account for and on behalf of the counterparty.

''(4) REPORTING REQUIREMENT.—If the counterparty does not choose to require segregation of the funds or other property supplied as initial margin for the purpose of margining, guaranteeing, or securing the obligations of the counterparty, the swap participant shall report to the counterparty of the swap participant on a quarterly basis that the back office procedures of the swap participant relating to initial margin and collateral requirements are in compliance with the agreement of the counterparties.''.

SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.

(a) REGISTRATION REQUIREMENT.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by striking subsections (a) and (b) and inserting the following:

''(a) REGISTRATION REQUIREMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

''(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

''(i) excluded from this Act by subsection (a)(1)(C)(i), (c), or (f) of section 2; or

''(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

''(B) a non-security-based swap.

''(2) EXCEPTION.—Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

''(b) VOLUNTARY REGISTRATION.—A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.''.

(b) REGISTRATION FOR BANKS AND CLEARING AGENCIES; EXEMPTIONS; ANNUAL REPORTS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

''(g) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether the person is also licensed as a bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

''(h) EXISTING BANKS AND CLEARING AGENCIES.—

''(1) IN GENERAL.—A bank or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before date of enactment of this subsection—

''(A) the bank cleared swaps as a multilateral clearing organization; or

''(B) the clearing agency cleared swaps.

''(2) CONVERSION OF BANK.—A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.''.

(c) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—Section 5b(c) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)) is amended by striking paragraph (2) and inserting the following:

''(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

''(A) COMPLIANCE.—

''(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(ii) DISCRETION OF DERIVATIVES CLEARING ORGANIZATION.—Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

''(B) FINANCIAL RESOURCES.—

''(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

''(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

''(I) enable the derivatives clearing organization to meet each financial obligation of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

''(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

''(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

''(i) IN GENERAL.—Each derivatives clearing organization shall establish—

''(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

''(II) appropriate standards for determining the eligibility of agreements, contracts, and transactions submitted to the derivatives clearing organization for clearing.

''(ii) REQUIRED PROCEDURES.—Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

''(iii) REQUIREMENTS.—The participation and membership requirements of each derivatives clearing organization shall—

''(I) be objective;

''(II) be publicly disclosed; and

''(III) permit fair and open access.

''(iv) OFFSETTING ECONOMICALLY EQUIVALENT POSITIONS.—The rules of a registered derivatives clearing organization shall prescribe that all swaps with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization.

''(D) RISK MANAGEMENT.—

''(i) IN GENERAL.—Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

''(ii) MEASUREMENT OF CREDIT EXPOSURE.—Each derivatives clearing organization shall—

''(I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

''(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

''(iii) LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS.—Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

''(I) the operations of the derivatives clearing organization would not be disrupted; and

''(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

''(iv) MARGIN REQUIREMENTS.—The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

''(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS.—Each model and parameter used in setting margin requirements under clause (iv) shall be—

''(I) risk-based; and

''(II) reviewed on a regular basis.

''(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—

''(i) complete money settlements on a timely basis (but not less frequently than once each business day);

''(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

''(iii) ensure that money settlements are final when effected;

''(iv) maintain an accurate record of the flow of funds associated with each money settlement;

''(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

''(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

''(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

''(F) TREATMENT OF FUNDS.—

''(i) REQUIRED STANDARDS AND PROCEDURES.—Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

''(ii) HOLDING OF FUNDS AND ASSETS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of

loss or of delay in the access by the derivatives clearing organization to the assets and funds.

''(iii) PERMISSIBLE INVESTMENTS.—Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

''(G) DEFAULT RULES AND PROCEDURES.—

''(i) IN GENERAL.—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

''(I) become insolvent; or

''(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

''(ii) DEFAULT PROCEDURES.—Each derivatives clearing organization shall—

''(I) clearly state the default procedures of the derivatives clearing organization;

''(II) make publicly available the default rules of the derivatives clearing organization; and

''(III) ensure that the derivatives clearing organization may take timely action—

''(aa) to contain losses and liquidity pressures; and

''(bb) to continue meeting each obligation of the derivatives clearing organization.

''(H) RULE ENFORCEMENT.—Each derivatives clearing organization shall—

''(i) maintain adequate arrangements and resources for—

''(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

''(II) the resolution of disputes;

''(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

''(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

''(I) SYSTEM SAFEGUARDS.—Each derivatives clearing organization shall—

''(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;

''(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

''(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

''(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

''(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

''(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

''(K) RECORDKEEPING.—Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—

''(i) in a form and manner that is acceptable to the Commission; and

''(ii) for a period of not less than 5 years.

''(L) PUBLIC INFORMATION.—

''(i) IN GENERAL.—Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

''(ii) AVAILABILITY OF INFORMATION.—Each derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

''(iii) PUBLIC DISCLOSURE.—Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

''(I) the terms and conditions of each contract, agreement, and other transaction cleared and settled by the derivatives clearing organization;

''(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

''(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

''(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

''(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

''(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—

''(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and

''(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

''(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, a derivatives clearing organization may not—

''(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

''(ii) impose any material anticompetitive burden.

''(O) GOVERNANCE FITNESS STANDARDS.—

''(i) GOVERNANCE ARRANGEMENTS.—Each derivatives clearing organization shall establish governance arrangements that are transparent—

''(I) to fulfill public interest requirements; and

''(II) to support the objectives of owners and participants.

''(ii) FITNESS STANDARDS.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

''(I) directors;

''(II) members of any disciplinary committee;

''(III) members of the derivatives clearing organization;

''(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

''(V) any party affiliated with any individual or entity described in this clause.

''(P) CONFLICTS OF INTEREST.—Each derivatives clearing organization shall—

''(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and

''(ii) establish a process for resolving conflicts of interest described in clause (i).

''(Q) COMPOSITION OF GOVERNING BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

''(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.''.

(d) REPORTING REQUIREMENTS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) (as amended by subsection (b)) is amended by adding at the end the following:

''(j) REPORTING REQUIREMENTS.—

''(1) DUTY OF DERIVATIVES CLEARING ORGANIZATIONS.—Each derivatives clearing organization that clears non-security-based swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this Act.

''(2) DATA COLLECTION AND MAINTENANCE REQUIREMENTS.—The Commission shall adopt data collection and maintenance requirements for non-security-based swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for non-security-based swaps data reported to non-security-based swap data repositories.

''(3) INFORMATION SHARING.—The Commission shall require derivatives clearing organizations to provide information collected under paragraph (2) to any of the following regulatory authorities that requires it—

''(A) the Board;

''(B) the Securities and Exchange Commission;

''(C) each appropriate prudential regulator;

''(D) the Financial Stability Oversight Council;

''(E) the Department of Justice; and

''(F) any other person that the Commission determines to be appropriate, including—

''(i) foreign financial supervisors (including foreign futures authorities);

''(ii) foreign central banks; and

''(iii) foreign ministries.

''(4) PUBLIC INFORMATION.—Each derivatives clearing organization that clears non-security-based swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13).''.

(e) PUBLIC DISCLOSURE.—Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence—

(1) by inserting '', central bank and ministries,'' after ''department'' each place it appears; and

(2) by striking ''. is a party.'' and inserting '', is a party.''.

(f) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEALS.—The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) by striking sections 404 and 407 (7 U.S.C. 27b, 27e);

(B) in section 402 (7 U.S.C. 27), by striking subsection (d); and

(C) in section 408 (7 U.S.C. 27f)—

(i) in subsection (c)—

(I) by striking ''in the case'' and all that follows through ''a hybrid'' and inserting ''in the case of a hybrid'';

(II) by striking ''; or'' and inserting a period; and

(III) by striking paragraph (2);

(ii) by striking subsection (b); and

(iii) by redesignating subsection (c) as subsection (b).

(2) LEGAL CERTAINTY FOR BANK PRODUCTS ACT OF 2000.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

SEC. 726. TRANSPARENCY OF SWAP TRANSACTION DATA.

(a) PURPOSES.—The Commodity Futures Trading Commission is directed, consistent with the purposes of this title, to use its authority under this title to facilitate the prompt and accurate collection, calculation, processing or preparation, and public dissemination of information on transactions and positions in non-security-based swaps.

(b) TRANSPARENCY OF NON-SECURITY-BASED SWAP TRANSACTION DATA.—The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o–1) the following:

"SEC. 4r. REPORTING AND RECORDKEEPING FOR NON-SECURITY-BASED SWAPS.

''(a) MANDATORY REPORTING OF NON-SECURITY-BASED SWAP TRANSACTIONS.—

''(1) IN GENERAL.—Any person that enters into or effects a transaction in a non-security-based swap shall report such transaction through a derivatives clearing organization or a non-security-based swap data repository registered with the Commission pursuant to section 21 within the period specified by any rule or regulation adopted by the Commission under this paragraph. If no registered non-security-based swap data repository accepts the non-security-based swap, the person shall report the transaction to the Commission pursuant to the requirements that the Commission may by rule or regulation prescribe. Each transaction report shall disclose whether the transaction is a bona fide hedging swap transaction as defined in section 1a(33B) and any other information that the Commission has, by rule or regulation, prescribed as necessary or appropriate in furtherance of the purposes of this section.

''(2) PERMISSIBLE REPORTING FOR A COUNTERPARTY THAT IS NOT A SWAP PARTICIPANT.—A swap participant may report a transaction on behalf of its counterparty to that transaction provided that counterparty is not a swap participant.

''(3) RULEMAKING REQUIRED.—Not later than 180 days after the date of enactment of this section, the Commission shall by rule or regulation establish a schedule for the reporting through a derivatives clearing organization or registered non-security-based swap data repository or to the Commission of each non-security-based swap, group, category, type, or class of non-security-based swap entered into—

''(A) before the effective date of the Commission's rule or regulation and still outstanding as of such effective date; and

''(B) on or after the effective date of the Commission's rule or regulation.

''(b) CONFIDENTIALITY OF INFORMATION PROVIDED.—No non-public information provided to or obtained by the Commission under this section may be disclosed to any other person. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or foreign government with which the Commission has an information sharing arrangement that requests the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

''(c) PUBLIC DISSEMINATION OF CERTAIN INFORMATION PROVIDED.—

''(1) IN GENERAL.—Notwithstanding subsection (b), the Commission is directed to use its authority under this Act to facilitate the public dissemination of prices and volumes of completed non-security-based swap transactions to provide investors and other market participants with information about recently executed transactions for the purposes of helping them to mark existing swap positions to market, make informed decisions before executing future transactions, and assess the quality of transactions they have executed. For each non-security-based swap, group, category, type, or class of non-security-based swap, the Commission shall determine by rule the extent to which individual or aggregated transaction data must be disseminated and the timeliness of such disseminations.

''(2) RELIANCE ON ECONOMIC ANALYSIS.—In making determinations under this subsection, the Commission shall rely on economic analyses provided by the Chief Economist of the Commission and independent researchers that empirically evaluate the effects of increasing price transparency on measures of efficiency, competition, and market quality, including transaction costs and liquidity. To facilitate such empirical analyses, the Commission may design pilot programs that increase price transparency on selected non-security-based swaps.

''(3) CHIEF ECONOMIST REPORT.—Whenever the Commission publishes a release giving notice of a proposed rulemaking under this subsection, and affords interested persons an opportunity to comment on such proposed rulemaking or publishes a release adopting a final rule, such release shall include as a part thereof a report by the Chief Economist of the Commission. Each report shall describe the economic analysis of the expected consequences of the proposed or final Commission action, refer to any peer-reviewed or other literature, including any empirical study undertaken by the staff of the Commission, that is relevant to the analysis contained in the report, and describe the extent to which the conclusions of the report remain subject to uncertainty.

''(4) PROTECTION OF PROPRIETARY INFORMATION.—In making determinations under this subsection, the Commission shall consider whether public dissemination of individual or aggregate transaction data could result in the dissemination of proprietary information about the swap transactions, positions, trading strategies, or the ability of particular market participants to conduct effective hedging or risk management. The rules that the Commission adopts under this subsection shall include protections to ensure that the public dissemination of swap transaction data does not result in the disclosure of such proprietary information.''.

''(5) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require derivatives clearing organizations and registered non-security-based swap data repositories to publicly disseminate the non-security-based swap transaction and pricing data required to be reported under this paragraph.

''(6) QUARTERLY PUBLIC REPORTING OF AGGREGATE NON-SECURITY-BASED SWAP DATA.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a quarterly basis to make available to the public information relating to—

''(i) the trading and clearing in the major non-security-based swap categories; and

''(ii) the market participants and developments in new products.

''(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

''(i) use any information reported directly to the Commission and information from registered non-security-based swap data repositories and derivatives clearing organizations; and

''(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.''.

SEC. 727. SWAP DATA REPOSITORIES.

The Commodity Exchange Act is amended by inserting after section 20 (7 U.S.C. 24) the following:

"SEC. 21. NON-SECURITY-BASED SWAP DATA REPOSITORIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—A non-security-based swap data repository may register by filing with the Commission an application in such form as the Commission, by rule or regulation, shall prescribe containing such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

''(2) INSPECTION AND EXAMINATION.—Each registered non-security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

''(3) INFORMATION SHARING.—The Commission shall require each registered non-security-based swap data repository to provide information with respect to its functions as a non-security-based swap data repository to any of the following regulatory authorities that requests it—

''(A) the Board;

''(B) the Securities and Exchange Commission;

''(C) each appropriate prudential regulator;

''(D) the Financial Stability Oversight Council;

''(E) the Department of Justice; and

''(F) any other person that the Commission determines to be appropriate, including—

''(i) foreign financial supervisors (including foreign futures authorities);

''(ii) foreign central banks; and

''(iii) foreign ministries.

''(b) STANDARD SETTING.—

''(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each non-security-based swap, including whether the transaction is a bona fide hedging swap transaction as defined in section 1a, that shall be collected and maintained by each registered non-security-based swap data repository.

''(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for non-security-based swap data repositories.

''(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of non-security-based swaps.

''(c) DUTIES.—A registered non-security-based swap data repository shall—

''(1) accept data prescribed by the Commission for one or more non-security-based swaps;

''(2) confirm with both counterparties to the non-security-based swap the accuracy of the data that was submitted;

''(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;

''(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

''(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 726 of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010;

''(5) at the direction of the Commission, establish automated systems for monitoring,

screening, and analyzing non-security-based swap data;

''(6) maintain the confidentiality non-security-based swap transaction information that the registered non-security-based swap data repository receives from a counterparty, swap participant, or any other registered entity in accordance with the requirements that the Commission shall jointly with the Securities and Exchange Commission prescribe through notice-and-comment rulemaking.

''(d) CORE PRINCIPLES APPLICABLE TO REGISTERED NON-SECURITY-BASED SWAP DATA REPOSITORIES.—

''(1) ANTITRUST CONSIDERATIONS.—Unless specifically reviewed and approved by the Commission for antitrust purposes, a registered non-security-based swap data repository may not—

''(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

''(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

''(2) GOVERNANCE ARRANGEMENTS.—Each registered non-security-based swap data repository shall establish governance arrangements that are transparent and assure fair representation of its participants in reasonable proportion to their use of the non-security-based data repository in the selection of its directors and administration of its affairs.

''(3) CONFLICTS OF INTEREST.—Each registered non-security-based swap data repository shall—

''(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the non-security-based swap data repository; and

''(B) establish a process for resolving conflicts of interest described in subparagraph (A).

''(4) NONDISCRIMINATORY ACCESS.—A registered non-security-based swap data repository—

''(A) may not mandate directly or indirectly the substantive terms and conditions of transactions reported to the non-security-based data repository;

''(B) must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants and must not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants;

''(C) provide for participation in the non-security-based swap data repository by any swap participant and any other person or class of persons as the Commission, by rule or regulation, may determine to be necessary or appropriate in furtherance of the purposes of this section; and

''(D) may not unfairly discriminate in the admission of participants or among participants in the use of the non-security-based swap data repository.

''(e) RULES.—The Commission shall adopt rules, jointly with the Securities and Exchange Commission, governing persons that are registered under this section.''.

SEC. 728. LARGE NON-SECURITY-BASED SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4s (as added by section 729) the following:

''SEC. 4t. LARGE NON-SECURITY-BASED SWAP TRADER REPORTING.

''(a) PROHIBITION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to enter into any non-security-based swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

''(A) the person directly or indirectly enters into the non-security-based swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

''(B) the person directly or indirectly has or obtains a position in the non-security-based swap equal to or in excess of such amount as shall be established periodically by the Commission.

''(2) EXCEPTION.—Paragraph (1) shall not apply if—

''(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

''(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such non-security-based swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

''(b) REQUIREMENTS.—Books and records described in subsection (a)(2)(B) shall—

''(1) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation; and

''(2) be open at all times to inspection and examination by any representative of the Commission.

''(c) APPLICABILITY.—For purposes of this section, the non-security-based swaps, futures, and cash or spot transactions and positions of any person shall include the non-security-based swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

''(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination as to whether a non-security-based swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 4a(a)(3).''.

SEC. 729. REGISTRATION AND REGULATION OF SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 726) the following:

''SEC. 4s. REGISTRATION AND REGULATION OF SWAP PARTICIPANTS.

''(a) REGISTRATION.—Swap participants must register with the Commission.

''(b) NOTICE REGISTRATION.—A swap participants shall be exempt from registration with the Commission, if it files a notice registration with the Commission in the form and manner that the Commission shall prescribe, jointly with the Securities and Exchange Commission, by notice-and-comment rulemaking and—

''(1) it is exempt pursuant to a rule or order, issued by the Commission, jointly with the Securities and Exchange Commission, to exempt swap participants that engage primarily in security-based swap transactions and are registered as swap participants with the Securities and Exchange Commission; or

''(2) all of its outstanding swap transactions are cleared swaps.

''(c) REQUIREMENTS.—

''(1) IN GENERAL.—A person shall register as a swap participant by filing a registration application with the Commission.

''(2) CONTENTS.—

''(A) IN GENERAL.—The application shall be made in such form and manner and containing such information as the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking, shall prescribe concerning the swap participant's swap activities.

''(B) CONTINUAL REPORTING.—A person that is registered as a swap participant shall continue to submit to the Commission reports that contain such information pertaining to the swap participant's swap activities as the Commission may require.

''(3) TRANSITION.—Rules under this section shall provide for the registration of swap participants 1 year after the date of enactment of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010.

''(4) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap participant to permit any person associated with a swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap participant, if the swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

''(d) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) CAPITAL REQUIREMENTS FOR PRUDENTIALLY REGULATED SWAP PARTICIPANTS.—Each swap participant for which there is a prudential regulator shall meet such minimum capital requirements as such prudential regulator shall prescribe pursuant to the authority of the prudential regulator.

''(2) MARGIN REQUIREMENTS FOR SWAP PARTICIPANTS FOR UNCLEARED NON-SECURITY-BASED SWAPS.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the Commission shall prescribe by rule or regulation the minimum margin requirements that apply to transactions between swap participants in a particular uncleared non-security-based swap or any group, category, type, or class of uncleared non-security-based swap, as the Commission deems appropriate for the risk of that particular uncleared non-security-based swap or class, group, category, type of uncleared non-security-based swap, for the purposes of—

''(i) reducing the risk of losses to counterparties; and

''(ii) preserving the financial integrity of markets trading non-security-based swaps.

''(B) CONSIDERATIONS.—The Commission shall not issue rules under this subsection unless the Commission determines that such rules—

''(i) would not inappropriately encourage or discourage the clearing of certain non-security-based swaps, resulting in an undue increase in risk to the financial system;

''(ii) are supported by economic analysis provided by the Chief Economist of the Commission; and

''(iii) would not impose any unnecessary burden on competition.

''(C) EXCEPTIONS.—The Commission shall not impose minimum margin requirements on—

''(i) positions in foreign exchange forwards, swaps, or options; and

''(ii) non-security-based swap transactions in which one counterparty directly or indirectly controls, is controlled by, or is under common control with the other counterparty, provided, however, that the Commission, jointly with the Financial Stability Oversight Council, may determine, by notice-and-comment rulemaking, that transactions between certain parties under common control are subject to the minimum margin requirements imposed by the Commission under this subsection.

''(D) OUTSTANDING SWAP POSITIONS.—The Commission and the Securities and Exchange Commission may by joint notice-and-comment rulemaking or order exempt any

swap, group, category, type, or class of swap entered into on or before the date of enactment of this Act. In determining whether an exemption is appropriate, the Commission and the Securities and Exchange Commission shall take into account the notional value, the tenor, and the risk to the financial stability of the United States posed by the underlying swap, group, category, type, or class of swap.

''(3) SPECIAL MARGIN REQUIREMENTS FOR UNCLEARED SWAP TRANSACTIONS INVOLVING A SWAP PARTICIPANT WITH A SUBSTANTIAL NET UNCOLLATERALIZED SWAP POSITION.—

''(A) IN GENERAL.—If a swap participant has a substantial net uncollateralized swap position, any subsequent swap transaction, regardless of whether the swap participant's counterparty is a swap participant, shall be subject to—

''(i) any applicable clearing requirement under section (h); and

''(ii) any applicable margin requirements that the Commission has prescribed under paragraph (2).

''(B) SUBSTANTIAL NET UNCOLLATERALIZED POSITION.—

''(i) IN GENERAL.—From time to time, the Financial Stability Oversight Council shall define, by rule or regulation, 'substantial net uncollateralized swap position' by identifying the level of a net uncollateralized position in swaps that a swap participant can hold without posing a threat to the financial system stability of the United States.

''(ii) RELIANCE ON ECONOMIC ANALYSIS.—In making determinations under this subsection, the Commission and the Board of Governors shall rely on economic analysis provided by economists of the Commission and economists of the Board of Governors.

''(e) REPORTING AND RECORDKEEPING.—With respect to its swap business, each swap participant registered with the Commission—

''(1) shall make such reports as are required by the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking;

''(2)(A) for which there is a prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the prudential regulator; and

''(B) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as is prescribed by the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking, by rule or regulation; and

''(3) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

''(f) BUSINESS CONDUCT STANDARDS AND REQUIREMENTS.—With respect to its swap business, each swap participant—

''(1) for which there is a prudential regulator, shall comply with such business conduct standards and requirements as the prudential regulator may impose; and

''(2) for which there is no prudential regulator, shall comply with such business conduct standards and requirements as the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking, shall prescribe. Such business conduct requirements shall—

''(A) establish the standard of care required for a swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant; and

''(B) require disclosure by the swap participant to any counterparty to the swap (other than a counterparty that is a swap participant) of—

''(i) information about the material risks and characteristics of the swap; and

''(ii) any material conflicts of interest that the swap participant may have in connection with the swap.

''(g) DOCUMENTATION AND BACK OFFICE STANDARDS.—Each swap participant registered with the Commission—

''(1) for which there is a prudential regulator, shall comply with such documentation and back office standards as the prudential regulator may impose; and

''(2) for which there is no prudential regulator, shall conform with such standards as the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking, may prescribe that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

''(h) CONFIDENTIALITY.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any information required by Commission rule or regulation to be reported to the Commission under this subsection, except that nothing in this paragraph authorizes the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.''.

SEC. 730. NON-SECURITY-BASED SWAP EXECUTION FACILITIES.

The Commodity Exchange Act is amended by inserting after section 5g (7 U.S.C. 7b–2) the following:

''SEC. 5h. NON-SECURITY-BASED SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—No person may operate a facility for the trading or processing of non-security-based swaps unless the facility is registered as a non-security-based swap execution facility or as a designated contract market under this section.

''(2) DUAL REGISTRATION.—Any person that is required to register as a non-security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission.

''(b) TRADING AND TRADE PROCESSING.—A non-security-based swap execution facility that is registered under subsection (a) may—

''(1) make available for trading any non-security-based swap; and

''(2) facilitate trade processing of any non-security-based swap.

''(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a non-security-based swap execution facility and uses the same electronic trade execution system for trading on the contract market and the non-security-based swap execution facility, identify whether the electronic trading is taking place on the contract market or the non-security-based swap execution facility.

''(d) CORE PRINCIPLES FOR NON-SECURITY-BASED SWAP EXECUTION FACILITIES.—

''(1) COMPLIANCE WITH CORE PRINCIPLES.—

''(A) IN GENERAL.—To be registered, and maintain registration, as a non-security-based swap execution facility, the non-security-based swap execution facility shall comply with—

''(i) the core principles described in this subsection; and

''(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(B) REASONABLE DISCRETION OF NON-SECURITY-BASED SWAP EXECUTION FACILITY.—Unless otherwise determined by the Commission by rule or regulation, a non-security-based swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the non-security-based swap execution facility complies with the core principles described in this subsection.

''(2) COMPLIANCE WITH RULES.—A non-security-based swap execution facility shall—

''(A) monitor and enforce compliance with any rule of the non-security-based swap execution facility, including—

''(i) the terms and conditions of the non-security-based swaps traded or processed on or through the non-security-based swap execution facility; and

''(ii) any limitation on access to the non-security-based swap execution facility; and

''(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

''(i) to provide market participants with impartial access to the market; and

''(ii) to capture information that may be used in establishing whether rule violations have occurred.

''(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The non-security-based swap execution facility shall permit trading only in non-security-based swaps that are not readily susceptible to manipulation.

''(4) MONITORING OF TRADING AND TRADE PROCESSING.—The non-security-based swap execution facility shall—

''(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

''(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the non-security-based swap execution facility; and

''(ii) procedures for trade processing of non-security-based swaps on or through the facilities of the non-security-based swap execution facility; and

''(B) monitor trading in non-security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

''(5) INFORMATION SHARING.—The non-security-based swap execution facility shall—

''(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

''(B) provide the information to the following on request—

''(i) the Commission;

''(ii) the Securities and Exchange Commission;

''(iii) the Board;

''(iv) each appropriate prudential regulator;

''(v) the Council;

''(vi) the Department of Justice; and

''(vii) any other foreign regulatory authority that the Commission determines to be appropriate and with whom the Commission has entered into an information sharing agreement; and

''(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

''(6) POSITION LIMITS OR ACCOUNTABILITY.—

''(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the non-security-based swap execution facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

''(B) POSITION LIMITS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the non-security-based swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

''(C) POSITION ENFORCEMENT.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), a non-security-based swap execution facility shall reject any proposed non-security-based swap transaction if, based on information readily available to a non-security-based swap execution facility, any proposed non-security-based swap transaction would cause a non-security-based swap execution facility customer that would be a party to such swap transaction to exceed such position limitation.

''(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The non-security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of non-security-based swaps entered on or through the facilities of the non-security-based swap execution facility, including the clearance and settlement of the non-security-based swaps pursuant to section 2(h)(1).

''(8) EMERGENCY AUTHORITY.—The non-security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any non-security-based swap or to suspend or curtail trading in a non-security-based swap.

''(9) TIMELY PUBLICATION OF TRADING INFORMATION.—

''(A) IN GENERAL.—The non-security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on non-security-based swaps to the extent prescribed by the Commission.

''(B) CAPACITY OF NON-SECURITY-BASED SWAP EXECUTION FACILITY.—The non-security-based swap execution facility shall be required to have the capacity to electronically capture trade information with respect to transactions executed on the facility.

''(10) RECORDKEEPING AND REPORTING.—

''(A) IN GENERAL.—A non-security-based swap execution facility shall—

''(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

''(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act.

''(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for non-security-based swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and non-security-based swap data repositories.

''(11) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the non-security-based swap execution facility shall avoid—

''(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or

''(B) imposing any material anticompetitive burden on trading or clearing.

''(12) CONFLICTS OF INTEREST.—The non-security-based swap execution facility shall—

''(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

''(B) establish a process for resolving the conflicts of interest.

''(13) FINANCIAL RESOURCES.—

''(A) IN GENERAL.—The non-security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the non-security-based swap execution facility.

''(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a non-security-based swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the non-security-based swap execution facility to cover the operating costs of the non-security-based swap execution facility for a 1-year period, as calculated on a rolling basis.

''(14) SYSTEM SAFEGUARDS.—The non-security-based swap execution facility shall—

''(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

''(i) are reliable and secure; and

''(ii) have adequate scalable capacity;

''(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that are designed to allow for—

''(i) the timely recovery and resumption of operations; and

''(ii) the fulfillment of the responsibilities and obligation of the non-security-based swap execution facility; and

''(C) periodically conduct tests to verify that the backup resources of the non-security-based swap execution facility are sufficient to ensure continued—

''(i) order processing and trade matching;

''(ii) price reporting;

''(iii) market surveillance and

''(iv) maintenance of a comprehensive and accurate audit trail.

''(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a non-security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

''(f) RULES.—The Commission shall prescribe rules governing the regulation of alternative non-security-based swap execution facilities under this section.''.

SEC. 731. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

(a) IN GENERAL.—Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a, 7a–3) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) in subsection (a)(1)(A), in the first sentence, by striking ''or 5a''; and

(B) in paragraph (2) of subsection (g) (as redesignated by section 723(a)(1)(B)), by striking ''section 5a of this Act'' and all that follows through ''5d of this Act'' and inserting ''section 5b of this Act''.

(2) Section 6(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is amended—

(A) by striking ''that—'' and all that follows through ''(i) has been designated'' and inserting ''that has been designated'';

(B) by striking ''; or'' and inserting ''; and'' and

(C) by striking clause (ii).

SEC. 732. DESIGNATED CONTRACT MARKETS.

(a) CRITERIA FOR DESIGNATION.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (b).

(b) CORE PRINCIPLES FOR CONTRACT MARKETS.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (d) and inserting the following:

''(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

''(1) DESIGNATION AS BOARD OF TRADE.—

''(A) IN GENERAL.—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

''(i) any core principle described in this subsection; and

''(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(B) REASONABLE DISCRETION OF BOARD OF TRADE.—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

''(2) COMPLIANCE WITH RULES.—

''(A) IN GENERAL.—The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

''(i) access requirements;

''(ii) the terms and conditions of any contracts to be traded on the contract market; and

''(iii) rules prohibiting abusive trade practices on the contract market.

''(B) CAPACITY OF BOARD OF TRADE.—The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

''(C) REQUIREMENT OF RULES.—The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

''(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

''(4) PREVENTION OF MARKET DISRUPTION.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

''(A) methods for conducting real-time monitoring of trading; and

''(B) comprehensive and accurate trade reconstructions.

''(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

''(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

''(B) MAXIMUM ALLOWABLE POSITION LIMITATION.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board

of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

''(6) EMERGENCY AUTHORITY.—The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

''(A) to liquidate or transfer open positions in any contract;

''(B) to suspend or curtail trading in any contract; and

''(C) to require market participants in any contract to meet special margin requirements.

''(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

''(A) the terms and conditions of the contracts of the contract market; and

''(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

''(ii) the rules and specifications describing the operation of the contract market's—

''(I) electronic matching platform; or

''(II) trade execution facility.

''(8) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

''(9) EXECUTION OF TRANSACTIONS.—

''(A) IN GENERAL.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

''(B) RULES.—The rules of the board of trade may authorize, for bona fide business purposes—

''(i) transfer trades or office trades;

''(ii) an exchange of—

''(I) futures in connection with a cash commodity transaction;

''(II) futures for cash commodities; or

''(III) futures for non-security-based swaps; or

''(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

''(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

''(A) to assist in the prevention of customer and market abuses; and

''(B) to provide evidence of any violations of the rules of the contract market.

''(11) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce—

''(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

''(B) rules to ensure—

''(i) the financial integrity of any—

''(I) futures commission merchant; and

''(II) introducing broker; and

''(ii) the protection of customer funds.

''(12) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules—

''(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

''(B) to promote fair and equitable trading on the contract market.

''(13) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

''(14) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

''(15) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

''(16) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules—

''(A) to minimize conflicts of interest in the decision-making process of the contract market; and

''(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

''(17) COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS.—The governance arrangements of the board of trade shall be designed to promote the objectives of market participants.

''(18) RECORDKEEPING.—The board of trade shall maintain records of all activities relating to the business of the contract market—

''(A) in a form and manner that is acceptable to the Commission; and

''(B) for a period of at least 5 years.

''(19) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, the board of trade shall, to the maximum extent practicable, avoid—

''(A) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

''(B) imposing any material anticompetitive burden on trading on the contract market.

''(20) SYSTEM SAFEGUARDS.—The board of trade shall—

''(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

''(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

''(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

''(21) FINANCIAL RESOURCES.—

''(A) IN GENERAL.—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

''(B) DETERMINATION OF ADEQUACY.—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.''.

SEC. 733. MARGIN.

Section 8a(7) of the Commodity Exchange Act (7 U.S.C. 12a(7)) is amended—

(1) in subparagraph (C), by striking '', excepting the setting of levels of margin'';

(2) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and

(3) by inserting after subparagraph (C) the following:

''(D) margin requirements, provided that the rules, regulations, or orders shall—

''(i) be limited to protecting the financial integrity of the derivatives clearing organization;

''(ii) be designed for risk management purposes to protect the financial integrity of transactions; and

''(iii) not set specific margin amounts;''.

SEC. 734. POSITION LIMITS ON NON-SECURITY-BASED SWAPS.

(a) AGGREGATE POSITION LIMITS.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(1) by inserting after ''(a)'' the following: ''(1) IN GENERAL.—'';

(2) in the first sentence, by striking ''on electronic trading facilities with respect to a significant price discovery contract'' and inserting ''non-security-based swaps that perform or affect a significant price discovery function with respect to registered entities'';

(3) in the second sentence—

(A) by inserting '', including any group or class of traders,'' after ''held by any person''; and

(B) by striking ''on an electronic trading facility with respect to a significant price discovery contract,'' and inserting ''non-security-based swaps traded on or subject to the rules of a non-security-based swaps execution facility, or non-security-based swaps not traded on or subject to the rules of a non-security-based swaps execution facility that perform a significant price discovery function with respect to a registered entity,''; and

(4) by adding at the end the following:

''(2) AGGREGATE POSITION LIMITS.—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based on the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

''(A) contracts listed by designated contract markets;

''(B) with respect to an agreement, contract, or transaction that settles against, or in relation to, any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade;

''(C) non-security-based swaps traded on or subject to the rules of a non-security-based swap execution facility; and

''(D) non-security-based swaps not traded on or subject to the rules of a non-security-based swap execution facility that perform or affect a significant price discovery function with respect to a registered entity.

''(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination as to

whether a non-security-based swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider, as appropriate, the following factors:

''(A) PRICE LINKAGE.—The extent to which the non-security-based swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a registered entity based on the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

''(B) ARBITRAGE.—The extent to which the price for the non-security-based swap is sufficiently related to the price of another contract traded on a registered entity based on the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the non-security-based swaps on a frequent and recurring basis.

''(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a registered entity are directly based on, or are determined by referencing, the price generated by the swap.

''(D) MATERIAL LIQUIDITY.—The extent to which the volume of non-security-based swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a registered entity.

''(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a non-security-based swap serves a significant price discovery function with respect to a regulated market.

''(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any non-security-based swap or class of non-security-based swaps, or any transaction or class of transactions from any requirement that the Commission establishes under this section with respect to position limits.''.

(b) CONFORMING AMENDMENTS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking ''or derivatives transaction execution facility or facilities or electronic trading facility'' and inserting ''or non-security-based swap execution facility or facilities''; and

(2) in paragraph (2), by striking ''or derivatives transaction execution facility or facilities or electronic trading facility'' and inserting ''or non-security-based swap execution facility''.

SEC. 735. FOREIGN BOARDS OF TRADE.

(a) IN GENERAL.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended—

(1) in the first sentence, by striking ''The Commission'' and inserting the following:

''(2) PERSONS LOCATED IN THE UNITED STATES.—

''(3) IN GENERAL.—The Commission'';

(2) in the second sentence, by striking ''Such rules and regulations'' and inserting the following:

''(B) DIFFERENT REQUIREMENTS.—Rules and regulations described in subparagraph (A)'';

(3) in the third sentence—

(A) by striking ''No rule or regulation'' and inserting the following:

''(C) PROHIBITION.—Except as provided in paragraphs (1) and (2), no rule or regulation'';

(B) by striking ''that (1) requires'' and inserting the following: ''that—

''(i) requires''; and

(C) by striking ''market, or (2) governs'' and inserting the following: ''market; or

''(ii) governs''; and

(4) by inserting before paragraph (2) (as designated by paragraph (1)) the following:

''(1) FOREIGN BOARDS OF TRADE.—

''(A) IN GENERAL.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

''(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

''(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

''(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

''(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

''(aa) the information that the foreign board of trade will make publicly available;

''(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

''(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

''(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

''(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

''(B) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraph (A) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.''.

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting ''or by subsection (e)'' after ''Unless exempted by the Commission pursuant to subsection (c)''; and

(2) by adding at the end the following:

''(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with paragraphs (1) and (2) of subsection (b).''.

(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) (as amended by section 736) is amended by adding at the end the following:

''(6) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.''.

SEC. 736. LEGAL CERTAINTY FOR NON-SECURITY-BASED SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

''(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

''(A) IN GENERAL.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

''(B) NON-SECURITY-BASED SWAPS.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to an agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction—

''(i) to meet the definition of a non-security-based swap under section 1a; or

''(ii) to be cleared in accordance with section 2(h)(1).

''(5) LEGAL CERTAINTY.—

''(A) EFFECT ON NON-SECURITY-BASED SWAPS.—Unless specifically reserved in the applicable bilateral trading agreement, neither the enactment of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased

costs, regulatory change, or similar event under a bilateral trading agreement (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the bilateral trading agreement.

''(B) POSITION LIMITS.—Any position limit established under the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010 shall not apply to a position acquired in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; *provided*, however, that such positions shall be attributed to the trader if the trader's position is increased after the effective date of such position limit rule, regulation, or order.''.

SEC. 737. MULTILATERAL CLEARING ORGANIZATIONS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421, 4422) are repealed.

SEC. 738. ENFORCEMENT.

(a) CONFORMING AMENDMENTS.—

(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(A) in subsection (a)(2), by striking ''or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or non-security-based swap,'';

(B) in subsection (b), by striking ''or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or non-security-based swap,''; and

(C) by adding at the end the following:

''(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any non-security-based swap, on a group or index of securities (or any interest therein or based on the value thereof) that is a broad-based security index—

''(1) to employ any device, scheme, or artifice to defraud;

''(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

''(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.''.

(2) Section 4c(a)(1) of the Commodity Exchange Act (7 U.S.C. 6c(a)(1)) is amended by inserting ''or non-security-based swap'' before ''if the transaction is used or may be used''.

(3) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the first sentence by inserting ''or of any non-security-based swap,'' before ''or has willfully made''.

(4) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence, in the matter preceding the proviso, by inserting ''or of any non-security-based swap,'' before ''or otherwise is violating''.

(5) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a–1(a)) is amended in the matter preceding the proviso by inserting ''or any non-security-based swap'' after ''commodity for future delivery''.

(6) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(A) in subsection (a)—

(i) in paragraph (2), by inserting ''or of any non-security-based swap,'' before ''or to corner''; and

(ii) in paragraph (4), by inserting ''registered non-security-based swap data repository,'' before ''or futures association'' and

(B) in subsection (e)(1)—

(i) by inserting ''registered non-security-based swap data repository,'' before ''or registered futures association''; and

(ii) by inserting '', or non-security-based swaps,'' before ''on the basis''.

(7) Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13(a)) is amended by adding at the end the following:

''(6) Any person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.''.

(8) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by adding at the end the following:

''(11) SWAPS.—

''(A) IN GENERAL.—Subject to subparagraph (B), this section shall apply to any swap participant, derivatives clearing organization, registered non-security-based swap data repository, security-based swap data repository, or non-security-based swap execution facility regardless of whether the participant, organization, repository, or facility is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or prudential regulator for purposes of the amendments made by the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010.

''(B) LIMITATION.—The authority described in subparagraph (A) shall be limited by, and exercised in accordance with, section 4b–1 of the Commodity Exchange Act.''.

SEC. 739. RETAIL COMMODITY TRANSACTIONS.

(a) IN GENERAL.—Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking ''(to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))'' and inserting '', 5b, or 12(e)(2)(B))''; and

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

''(D) RETAIL COMMODITY TRANSACTIONS.—

''(i) APPLICABILITY.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

''(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

''(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

''(ii) EXCEPTIONS.—This subparagraph shall not apply to—

''(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

''(II) any security;

''(III) a contract of sale that—

''(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

''(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or

''(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

''(iii) ENFORCEMENT.—Sections 4(a), 4(b), and 4b apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

''(iv) ELIGIBLE COMMERCIAL ENTITY.—For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.

''(v) ACTUAL DELIVERY.—For purposes of clause (ii)(III), the term 'actual delivery' does not include delivery to a third party in a financed transaction in which the commodity is held as collateral.''.

(b) GRAMM-LEACH-BLILEY ACT.—Section 206 of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking ''For purposes of'' and inserting ''Except as provided in subsection (e), for purposes of''; and

(2) by adding at the end the following:

''(e) LIMITATION OF DEFINITION OF IDENTIFIED BANKING PRODUCT.—Except as provided in section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a), for purposes of section 131 of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010, the term 'identified banking product' does not include a retail commodity transaction.''.

SEC. 740. OTHER AUTHORITY.

Unless otherwise provided by the amendments made by this subtitle, the amendments made by this subtitle do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State agency of any authority derived from any other applicable law.

SEC. 741. ENHANCED COMPLIANCE BY REGISTERED ENTITIES.

(a) CORE PRINCIPLES FOR CONTRACT MARKETS.—Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) (as amended by section 732(b)) is amended by striking paragraph (1) and inserting the following:

''(1) DESIGNATION.—

''(A) IN GENERAL.—To be designated as, and to maintain the designation of, a board of trade as a contract market, the board of trade shall comply with—

''(i) the core principles described in this subsection; and

''(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(B) DISCRETION OF BOARD OF TRADE.—Unless the Commission determines otherwise by rule or regulation, the board of trade shall have reasonable discretion in establishing the manner by which the board of trade complies with each core principle.''.

(b) CORE PRINCIPLES.—Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)) (as amended by section 725(c)) is amended by striking subparagraph (A) and inserting the following:

''(A) REGISTRATION.—

''(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with—

''(I) the core principles described in this paragraph; and

''(II) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(ii) DISCRETION OF COMMISSION.—Unless the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle.''.

(c) EFFECT OF INTERPRETATION.—Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended by striking paragraph (2) and inserting the following:

''(2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).''.

SEC. 742. INSIDER TRADING.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

''(3) CONTRACT OF SALE.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any non-security-based swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into—

''(A) a contract of sale of a commodity for future delivery (or option on such a contract);

''(B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

''(C) a non-security-based swap.

''(4) IMPARTING OF NONPUBLIC INFORMATION.—

''(A) IMPARTING OF NONPUBLIC INFORMATION.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

''(i) a contract of sale of a commodity for future delivery (or option on such a contract);

''(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

''(iii) a non-security-based swap; and

''(B) KNOWING USE.—It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into—

''(i) a contract of sale of a commodity for future delivery (or option on such a contract);

''(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

''(iii) a non-security-based swap; and

''(C) THEFT OF NONPUBLIC INFORMATION.—It shall be unlawful for any person knowingly to steal, convert, or misappropriate acquire, by any means whatsoever, governmental information held or created by any department or agency of the Federal Government that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any non-security-based swap, where such person knows, or in the exercise of reasonable care should know acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—

''(i) a contract of sale of a commodity for future delivery (or option on such a contract);

''(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

''(iii) a non-security-based swap.

Provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or non-security-based swap described in clauses (i), (ii), or (iii).''.

SEC. 743. CONFORMING AMENDMENTS.

(a) Section 2(c)(1) of the Commodity Exchange Act (7 U.S.C. 2(c)(1)) is amended, in the matter preceding subparagraph (A), by striking ''5a (to the extent provided in section 5a(g)),''.

(b) Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 724) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking ''engage as'' and inserting ''be a''; and

(ii) by striking ''or introducing broker'' and all that follows through ''or derivatives transaction execution facility'';

(B) in paragraph (1), by striking ''or introducing broker''; and

(C) in paragraph (2), by striking ''if a futures commission merchant,''; and

(2) by adding at the end the following:

''(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.''.

(c) Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended—

(1) in subsection (a)(1)—

(A) by striking '', 5a(d),''; and

(B) by striking ''and section (2)(h)(7) with respect to significant price discovery contracts,''; and

(2) in subsection (f)(1), by striking ''section 4d(c) of this Act'' and inserting ''section 4d(e)''.

(d) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking ''or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,''.

(e) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking '', or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,''.

(f) Section 12(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)(B)) is amended—

(1) by striking ''section 2(c), 2(d), 2(f), or 2(g) of this Act'' and inserting ''section 2(c), 2(f), or 2(i) of this Act''; and

(2) by striking ''2(h) or''.

(g) Section 17(r)(1) of the Commodity Exchange Act (7 U.S.C. 21(r)(1)) is amended by striking ''section 4d(c) of this Act'' and inserting ''section 4d(e)''.

(h) Section 22(b)(1)(A) of the Commodity Exchange Act (7 U.S.C. 25(b)(1)(A)) is amended by striking ''section 2(h)(7) or''.

(i) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended—

(1) by striking ''section 2(c), 2(d), 2(f), or (2)(g) of such Act'' and inserting ''section 2(c), 2(f), or 2(i) of that Act''; and

(2) by striking ''2(h) or''.

Subtitle C—Regulation of Security-Based Swap Markets

SEC. 761. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (13), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(2) in paragraph (14), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(3) in paragraph (39)—

(A) in subparagraph (B)(i)(I), by striking ''or government securities dealer'' and inserting ''government securities dealer, or swap participant'';

(B) in subparagraph (B)(i)(II), by inserting ''swap participant,'' after ''government securities dealer,'';

(C) in subparagraph (C), by striking ''or government securities dealer'' and inserting ''government securities dealer, or swap participant''; and

(D) in subparagraph (D), by inserting ''swap participant,'' after ''government securities dealer,''; and

(4) by adding at the end the following:

''(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(66) SWAP PARTICIPANT.—The term 'swap participant' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(67) SECURITY-BASED SWAP.—The term 'security-based swap' means—

''(A) an instrument that is not a security; and

''(B) a swap, of which 1 or more material terms—

''(i) is based on the price, yield, value, or volatility of—

''(I) any single security, any narrow-based group or narrow-based index of securities, or any interest therein; or

''(II) any single loan, any narrow-based group or narrow-based index of loans, or any interest therein;

''(ii) is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence that is related to or based on—

''(I) a single security, an interest in a security, an issuer of a security, or narrow-based group or narrow-based index of securities, or interests in securities or issuers of securities; or

''(II) a single loan, an interest in a loan, a recipient of a loan, or narrow-based group or narrow-based index of loans, or interests in loans or recipients of loans;

''(iii) provides for the purchase or sale of no more than 9 securities or loans on a contingent basis, whether physically or cash settled, if such agreement, contract, or transaction predicates such purchase or sale (or a net cash payment in lieu thereof) on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of 1 or more reference entities; or

''(iv) allows for payment, settlement, termination, fulfillment, or extinguishment of the swap or delivery on the swap, by means of the transfer or receipt of no more than 9 securities or loans, including any narrow-based group or narrow-based index of securities or loans.

''(68) CLEARED SWAP.—The term 'cleared swap' means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commodity Futures Trading Commission or a clearing agency registered with the Commission.

''(69) SWAP.—The term 'swap' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(70) ASSOCIATED PERSON OF A SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'associated person of a swap participant' means—

''(i) any partner, officer, director, or branch manager of a swap participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a swap participant);

''(ii) any person that directly or indirectly controls, is controlled by, or is under common control with, a swap participant; and

''(iii) any employee of a swap participant.

''(B) EXCLUSION.—The term 'associated person of a swap participant' does not include any person associated with a swap participant the functions of which are solely clerical or ministerial.

''(71) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

''(72) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(73) PRUDENTIAL REGULATOR.—The term 'prudential regulator' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(74) SECURITY-BASED SWAP DATA REPOSITORY.—The term 'security-based swap data repository' means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties.

''(75) SWAP END USER.—The term 'swap end user' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(76) BROAD-BASED SECURITY INDEX.—The term 'broad-based security index' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).''.

(b) DEFINITIONS UNDER THE SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (3), by adding at the end the following: ''Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or which it references, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.''; and

(2) by adding at the end the following:

''(17) The terms 'security-based swap', and 'swap', have the same meanings as in paragraphs (67) and (69), respectively, of section 3(a) of the Securities Exchange Act of 1934.

''(18) The terms 'purchase' or 'sale' of a security-based swap, shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, novation, or similar transfer or conveyance of, or extinguishment (prior to its scheduled extinguishment date) of material rights or obligations under, a security-based swap, as the context may require.''.

SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SWAPS.

(a) REPEAL OF LAW.—The following provisions of law are repealed:

(1) Sections 206A, 206B, and 206C of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

(2) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b–1).

(3) Section 17(d) of the Securities Act of 1933 (15 U.S.C. 77q(d)).

(4) Section 3A of the Securities Exchange Act of 1934 (15 U.S.C. 78c–1).

(5) Section 9(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(i)).

(6) Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455).

(7) Section 16(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(g)).

(8) Section 20(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(f)).

(9) Section 21A(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(g)).

(b) CONFORMING AMENDMENT TO THE SECURITIES ACT OF 1933.—Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) is amended by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' and inserting ''(as defined in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67))''.

(c) CONFORMING AND OTHER AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9(a) (15 U.S.C. 78i(a)), by striking paragraphs (2) through (5) and inserting the following:

''(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any swap with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

''(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, or any swap with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

''(4) If a dealer or broker, or the person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, any security not so registered, or any swap with respect to such security, for the purpose of inducing the purchase or sale of such security or such swap, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

''(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, or any swap with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.'';

(2) in section 10 (15 U.S.C. 78j)—

(A) by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) by striking ''agreements (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears;

(3) in section 15(c) (15 U.S.C. 78o(c)), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears;

(4) in section 16 (15 U.S.C. 78p)—

(A) in subsection (a)(2)(C), by striking ''agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act)'';

(B) in subsection (a)(3)(B), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(C) in subsection (b), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that the term appears;

(5) in section 20(d) (15 U.S.C. 78t(d)), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(6) in section 21A(a)(1) (15 U.S.C. 78u–1), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''.

SEC. 763. CLEARING.

(a) REGISTERED CLEARING AGENCIES.—Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following:

''(J) The Commission shall require clearing agencies to provide information collected related to the clearing of security-based swaps by such agencies to any of the following regulatory authorities that requests such information:

''(i) The Board.

''(ii) The Commodity Futures Trading Commission.

''(iii) Each appropriate prudential regulator.

''(iv) The Financial Stability Oversight Council.

''(v) The Department of Justice.

''(vi) Any other person that the Commission determines to be appropriate, including—

''(I) foreign financial supervisors (including foreign futures authorities);

''(II) foreign central banks; and

''(III) foreign ministries.

''(K) A person that is required to be registered as a clearing agency under this section shall register with the Commission regardless of whether the person is also licensed as a bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 7a–1).''.

(b) REQUIRED CLEARING.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 17C, as added by this subtitle, the following:

''SEC. 17D. CLEARING OF SECURITY-BASED SWAP TRANSACTIONS.

''(a) CLEARING REQUIREMENT.—

''(1) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—In accordance with paragraph (2), the Commission shall, jointly with the Commodity Futures Trading Commission and the Board, adopt rules to establish criteria for determining that a swap, or any group, category, type, or class of swap is required to be cleared.

''(2) FACTORS.—In carrying out paragraph (1), the following factors shall be considered—

''(A) whether 1 or more derivatives clearing organizations or clearing agencies accepts the swap or the group, category, type, or class of swap for clearing;

''(B) whether the swap or the group, category, type, or class of swap is traded pursuant to standard documentation and terms;

''(C) the liquidity of the swap or the group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof;

''(D) the ability to value the swap or the group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices;

''(E) the size of the market for the swap or the group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing;

''(F) whether a clearing mandate would mitigate risk to the financial system or whether such a mandate would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency; and

''(G) such other factors as the Commission, the Commodity Futures Trading Commission, and the Board may jointly determine are relevant.

''(3) SECURITY-BASED SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

''(A) shall review each security-based swap, or any group, category, type, or class of security-based swap that is currently listed for clearing and those which a clearing agency notifies the Commission that the clearing agency plans to list for clearing after the date of enactment of this subsection;

''(B) may require, pursuant to the rules adopted under paragraph (1) and through notice-and-comment rulemaking, that a particular security-based swap or any group, category, type, or class of security-based swap must be cleared if—

''(i) both counterparties are swap participants;

''(ii) the transaction was entered into on or before the later of—

''(I) the date of publication of the requirement in the Federal Register; or

''(II) the effective date of the requirement; and

''(iii) one of the counterparties directly or indirectly controls, is controlled by, or is under common control with the other counterparty to the transaction, provided, however, that the Commission, jointly with the Financial Stability Oversight Council, may determine, by rule or order, that transactions between certain parties under common control are subject to any requirement to clear under this clause; and

''(C) shall rely on economic analysis provided by economists of the Commission in making any determination under subparagraph (B), which economic analysis may refer to any peer-reviewed or other relevant literature conducted by independent researchers.

''(4) EFFECT.—

''(A) Nothing in this subsection affects the ability of a clearing agency to list for permissive clearing any security-based swap, or group, category, type, or class of security-based swap.

''(B) The Commission shall not compel a clearing agency to list a security-based swap or any group, category, type, or class of security-based swap for clearing if the clearing agency determines that the security-based swap or the group, category, type, or class of security-based swap would—

''(i) adversely impact the business operations of the clearing agency;

''(ii) impair the financial integrity of the clearing agency; or

''(iii) pose a threat to the financial stability of the United States.

''(5) PREVENTION OF EVASION.—

''(A) IN GENERAL.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under paragraph (3).

''(B) CONSIDERATIONS.—In issuing rules or interpretations under subparagraph (A), the Commission shall consider—

''(i) the extent to which the terms of the security-based swap or any group, category, type, or class of security-based swap are similar to the terms of other security-based swaps or other groups, categories, types, or classes of security-based swaps that are required to be cleared by swap participants under paragraph (3); and

''(ii) whether there is an economic purpose for any differences in the terms of the security-based swap or group, category, type, or class of security-based swap that are required to be cleared by swap participants under paragraph (3).

''(6) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under paragraph (1) and through notice-and-comment rulemaking, rescind a requirement imposed under paragraph (3) with respect to a security-based swap or any group, category, type, or class of security-based swap.

''(7) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission—

''(A) use the authority granted to the Commission under paragraph (3) to require swap participants to clear a particular security-based swap or any group, category, type, or class of security-based swap; or

''(B) use the authority granted to the Commission under paragraph (6) to rescind a requirement for swap participants to clear a particular security-based swap or any group, category, type, or class of security-based swap.

''(8) OPTION TO CLEAR FOR COUNTERPARTIES THAT ARE NOT SWAP PARTICIPANTS.—Before entering into a security-based swap transaction, any counterparty that is not a swap participant may elect to clear a security-based swap that is subject to a clearing requirement under paragraph (3). If such counterparty elects to clear, it shall have the sole right to select the derivatives clearing organization or clearing agency at which the security-based swap will be cleared.

''(b) SEGREGATION REQUIREMENTS FOR CLEARED SECURITY-BASED SWAPS.—

''(1) IN GENERAL.—

''(A) SEGREGATION REQUIRED.—A swap participant shall treat and deal with all money, securities, and property of any swap customer received to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the swap customer as the result of such a swap) as belonging to the swap customer.

''(B) COMMINGLING PROHIBITED.—Money, securities, and property of a swap customer described in subparagraph (A)—

''(i) shall be separately accounted for; and

''(ii) shall not be—

''(I) commingled with the funds of the swap participant; or

''(II) used to margin, secure, or guarantee any trades or contracts of any swap customer or person other than the person for whom the same are held.

''(2) EXCEPTIONS.—

''(A) USE OF FUNDS.—

''(i) IN GENERAL.—Notwithstanding paragraph (1), money, securities, and property of a swap customer of a swap participant described in paragraph (1) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a clearing agency.

''(ii) WITHDRAWAL.—Notwithstanding paragraph (1), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a clearing agency, or with any member of the clearing agency, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

''(B) COMMISSION ACTION.—Notwithstanding paragraph (1), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swap customer of a swap participant described in paragraph (1) may be commingled and deposited as provided in this subsection with any other money, securities, or property received by the swap participant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swap customer.

''(3) PERMITTED INVESTMENTS.—Money described in paragraph (1) may be invested in obligations of the United States or in any other investment that has minimal credit, market, and liquidity risks that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

''(4) PROHIBITION.—It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (1) to hold, dispose of,

or use any such money, securities, or property as belonging to the depositing swap participant or any person other than the swap customer of the swap participant.''.

SEC. 764. TRANSPARENCY OF SECURITY-BASED SWAP TRANSACTION DATA.

(a) PURPOSES.—The Securities and Exchange Commission is directed, consistent with the purposes of this subtitle, to use the authorities granted to it under this title, and the amendments made by this subtitle, to facilitate the prompt and accurate collection, calculation, processing or preparation, and public dissemination of information on transactions and positions in security-based swaps.

(b) NATIONAL TRADE REPORTING OF SECURITY-BASED SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 is amended by inserting after section 17B (15 U.S.C. 78q–2) the following:

''SEC. 17C. NATIONAL TRADE REPORTING OF SECURITY-BASED SWAP TRANSACTIONS.

''(a) MANDATORY REPORTING OF SECURITY-BASED SWAP TRANSACTIONS.—

''(1) IN GENERAL.—

''(A) TRANSACTIONS IN SECURITY-BASED SWAPS.—Any person that enters into or effects a transaction in a security-based swap shall report such transaction through a clearing agency or a security-based swap data repository registered with the Commission within the period specified by any rule or regulation adopted by the Commission under this paragraph.

''(B) UNCLEARED SECURITY-BASED SWAPS.—If no registered security-based swap data repository accepts an uncleared security-based swap, the person shall report the transaction to the Commission pursuant to the requirements that the Commission may by rule or regulation prescribe.

''(C) MANDATORY DISCLOSURES.—Each transaction report required under subparagraph (A) shall disclose whether the transaction is a bona fide hedging swap transaction, as that term is defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), and any other information that the Commission has, by rule or regulation, prescribed as necessary or appropriate in furtherance of the purposes of this section.

''(2) PERMISSIBLE REPORTING FOR A COUNTERPARTY THAT IS NOT A SECURITY-BASED SWAP PARTICIPANT.—A swap participant may report a transaction in accordance with this section on behalf of its counterparty to that transaction provided that counterparty is not a swap participant.

''(3) RULEMAKING REQUIRED.—Not later than 180 days after the date of enactment of this section, the Commission shall by rule or regulation establish a schedule for the reporting through a clearing agency or registered security-based swap data repository or to the Commission of each security-based swap transaction or group, category, type, or class of security-based swap transactions entered into—

''(A) before the effective date of the Commission's rule or regulation and still outstanding as of such effective date; and

''(B) on or after the effective date of the Commission's rule or regulation.

''(b) CONFIDENTIALITY OF INFORMATION PROVIDED.—No non-public information provided to or obtained by the Commission under this section may be disclosed to any other person. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or foreign government with which the Commission has an information sharing arrangement that requests the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

''(c) PUBLIC DISSEMINATION OF CERTAIN INFORMATION PROVIDED.—

''(1) IN GENERAL.—

''(A) PRICES AND VOLUMES.—Notwithstanding subsection (b), the Commission is directed to use the authority granted to the Commission under this title to facilitate the public dissemination of prices and volumes of completed security-based swap transactions to provide investors and other market participants with information about recently executed transactions for the purposes of helping such investors and participants to—

''(i) mark existing security-based swap positions to market;

''(ii) make informed decisions before executing future transactions; and

''(iii) assess the quality of transactions that such investors and participants have executed.

''(B) RULEMAKING.—For each security-based swap or group, category, type, or class of security-based swap, the Commission shall determine by rule the extent to which individual or aggregated transaction data shall be disseminated and the timeliness of such disseminations.

''(2) RELIANCE ON ECONOMIC ANALYSIS.—

''(A) IN GENERAL.—In making determinations under this subsection, the Commission shall rely on economic analyses provided by the Chief Economist of the Commission and independent researchers that empirically evaluate the effects of increasing price transparency on measures of efficiency, competition, and market quality, including transaction costs and liquidity.

''(B) PILOT PROGRAMS.—To facilitate the empirical analyses under subparagraph (A), the Commission may design pilot programs that increase price transparency on selected security-based swaps.

''(3) CHIEF ECONOMIST REPORT.—

''(A) IN GENERAL.—Whenever the Commission publishes a release giving notice of a proposed rulemaking under this subsection, and affords interested persons an opportunity to comment on such proposed rulemaking or publishes a release adopting a final rule, such release shall include as a part thereof a report by the Chief Economist of the Commission.

''(B) REQUIRED INCLUSIONS.—Each report required under subparagraph (A) shall—

''(i) describe the economic analysis of the expected consequences of the proposed or final Commission action;

''(ii) refer to any peer-reviewed or other literature, including any empirical study undertaken by the staff of the Commission, that is relevant to the analysis contained in the report; and

''(iii) describe the extent to which the conclusions of the report remain subject to uncertainty.

''(4) PROTECTION OF PROPRIETARY INFORMATION.—

''(A) CONSIDERATIONS.—In making determinations under this subsection, the Commission shall consider whether public dissemination of individual or aggregate transaction data could result in the dissemination of proprietary information about the swap transactions, positions, trading strategies, or the ability of particular market participants to conduct effective hedging or risk management.

''(B) REQUIRED RULES.—Any rules adopted by the Commission under this subsection shall include protections to ensure that the public dissemination of security-based swap transaction data does not result in the disclosure of the proprietary information described in subparagraph (A).

''(5) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require clearing agencies and registered security-based swap data repositories to publicly disseminate the security-based swap transaction and pricing data required to be reported under this subsection.

''(6) QUARTERLY PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a quarterly basis to make available to the public information relating to—

''(i) the trading and clearing in the major security-based swap categories; and

''(ii) the market participants and developments in new products.

''(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

''(i) use any information reported directly to the Commission and information from registered security-based swap data repositories and clearing agencies; and

''(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

''(d) REGISTRATION.—

''(1) IN GENERAL.—A security-based swap data repository may register by filing with the Commission an application in such form as the Commission, by rule or regulation, shall prescribe containing such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

''(2) INSPECTION AND EXAMINATION.—Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

''(3) SHARING OF INFORMATION.—The Commission shall require each registered security-based swap data repository to provide information collected related to its functions as a security-based swap data repository to any of the following regulatory authorities that requests such information:

''(A) The Board.

''(B) The Commodity Futures Trading Commission.

''(C) Each appropriate prudential regulator.

''(D) The Financial Stability Oversight Council.

''(E) The Department of Justice.

''(F) Any other person that the Commission determines to be appropriate, including—

''(i) foreign financial supervisors (including foreign futures authorities);

''(ii) foreign central banks; and

''(iii) foreign ministries.

''(e) STANDARD SETTING.—

''(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap, including whether the transaction is a bona fide hedging swap transaction as defined in section 1a of the Commodity Exchange Act (7 U.S.C. la), that shall be collected and maintained by each registered security-based swap data repository.

''(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.

''(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with such agencies' clearing of security-based swaps.

''(f) DUTIES.—A registered security-based swap data repository shall—

''(1) accept data prescribed by the Commission for 1 or more security-based swap under subsection (b);

''(2) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

''(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;

''(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

''(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements under subsection (c)(6);

''(5) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data; and

''(6) maintain the confidentiality of security-based swap transaction information that the registered security-based swap data repository receives from a counterparty, swap participant, or any other registered entity in accordance with the requirements that the Commission shall jointly with the Commodity Futures Trading Commission prescribe through notice-and-comment rulemaking.

''(g) REGULATORY REQUIREMENTS APPLICABLE TO REGISTERED SECURITY-BASED SWAP DATA REPOSITORIES.—The Commission shall adopt rules, by notice-and-comment rulemaking, for security-based swap data repositories that address the following:

''(1) ANTITRUST CONSIDERATIONS.—Unless specifically reviewed and approved by the Commission for antitrust purposes, a registered security-based swap data repository may not—

''(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

''(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

''(2) GOVERNANCE ARRANGEMENTS.—Each registered security-based swap data repository shall establish governance arrangements—

''(A) that are transparent; and

''(B) that assure fair representation of the participants of the repository in reasonable proportion to the use of the repository by such participants in the selection of the directors of the repository and the administration of the affairs of the repository.

''(3) CONFLICTS OF INTEREST.—Each registered security-based swap data repository shall—

''(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and

''(B) establish a process for resolving conflicts of interest described in subparagraph (A).

''(4) NON-DISCRIMINATORY ACCESS.—A registered security-based swap data repository—

''(A) may not mandate directly or indirectly the substantive terms and conditions of transactions reported to the repository;

''(B) shall provide for the equitable allocation of reasonable dues, fees, and other charges among the participants of the repository and shall not impose any schedule of prices, or fix rates or other fees, for services rendered by such participants;

''(C) shall provide for participation in the repository by any swap participant and any other person or class of persons as the Commission, by rule or regulation, may determine to be necessary or appropriate in furtherance of the purposes of this section; and

''(D) shall not unfairly discriminate in the admission of participants or among participants in the use of the repository.''.

SEC. 765. REGISTRATION AND REGULATION OF SWAP PARTICIPANTS.

Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following:

''(l) REGISTRATION AND REGULATION OF SWAP PARTICIPANTS.—

''(1) REGISTRATION.—Swap participants shall register with the Commission.

''(2) NOTICE REGISTRATION.—A swap participant shall be exempt from registration with the Commission if such participant files a notice registration with the Commission in the form and manner that the Commission shall prescribe, jointly with the Commodity Futures Trading Commission, by notice-and-comment rulemaking and—

''(A) such participant is exempt pursuant to a rule or order issued by the Commission, jointly with the Commodity Futures Trading Commission, to exempt swap participants that engage primarily in non-security-based swap transactions and are registered as swap participants with the Commodity Futures Trading Commission; or

''(B) all of its outstanding swap transactions are cleared swaps.

''(3) REQUIREMENTS.—

''(A) IN GENERAL.—A person shall register as a swap participant by filing a registration application with the Commission.

''(B) CONTENTS.—

''(i) IN GENERAL.—An application for registration under this subsection shall be made in such form and manner and contain such information as the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking, shall prescribe concerning the swap activities of the swap participant.

''(ii) CONTINUAL REPORTING.—A registered swap participant shall continue to submit to the Commission reports that contain such information pertaining to the swap activities of the swap participant as the Commission may require.

''(C) TRANSITION.—Rules under this section shall provide for the registration of swap participants not later than the date that is 1 year after the date of enactment of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010.

''(D) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap participant to permit any person associated with a swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap participant, if the swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

''(m) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) CAPITAL REQUIREMENTS FOR PRUDENTIALLY REGULATED SWAP PARTICIPANTS.—Each swap participant for which there is a prudential regulator shall meet such minimum capital requirements as such prudential regulator shall prescribe pursuant to the authority of the prudential regulator.

''(2) MARGIN REQUIREMENTS FOR SWAP PARTICIPANTS FOR UNCLEARED SECURITY-BASED SWAPS.—

''(A) IN GENERAL.—Except as provided in paragraph (C), the Commission shall prescribe by rule or regulation the minimum margin requirements that apply to transactions between swap participants in any particular uncleared security-based swap or any group, category, type, or class of security-based swap, as the Commission deems appropriate for the risk of that particular uncleared security-based swap or class, group, category, type of security-based swap, for the purposes of—

''(i) reducing the risk of losses to counterparties; and

''(ii) preserving the financial integrity of markets trading security-based swaps.

''(B) CONSIDERATIONS.—The Commission shall not issue rules under this subsection unless the Commission determines that such rules—

''(i) would not inappropriately encourage or discourage the clearing of certain security-based swaps, resulting in an undue increase in risk to the financial system;

''(ii) are supported by economic analysis provided by the Chief Economist of the Commission; and

''(iii) would not impose any unnecessary burden on competition.

''(C) OUTSTANDING SECURITY-BASED SWAP POSITIONS.—The Commission and the Commodity Futures Trading Commission may by joint notice-and-comment rulemaking or order exempt any security-based swap, group, category, type, or class of security-based swap entered into on or before the date of enactment of this Act. In determining whether an exemption is appropriate, the Commission and the Commodity Futures Trading Commission shall take into account the notional value, the tenor, and the risk to the financial stability of the United States posed by the underlying security-based swap, group, category, type, or class of security-based swap.

''(D) AFFILIATE TRANSACTIONS.—The Commission shall not impose minimum margin requirements on security-based swap transactions in which one counterparty directly or indirectly controls, is controlled by, or is under common control with the other counterparty, provided, however, that the Commission, jointly with the Financial Stability Oversight Council, may determine, by notice-and-comment rulemaking, that transactions between certain parties under common control are subject to the minimum margin requirements imposed by the Commission under this clause.

''(3) SPECIAL MARGIN REQUIREMENTS FOR UNCLEARED SECURITY-BASED SWAP TRANSACTIONS INVOLVING A SWAP PARTICIPANT WITH A SUBSTANTIAL NET UNCOLLATERALIZED SECURITY-BASED SWAP POSITION.—If a swap participant has a substantial net uncollateralized swap position, any subsequent swap transaction, regardless of whether the swap participant's counterparty is a swap participant, shall be subject to—

''(A) any applicable clearing requirement under section 17D(a); and

''(B) any applicable margin requirements that the Commission has prescribed under paragraph (2).

''(4) SUBSTANTIAL NET UNCOLLATERALIZED POSITION.—

''(A) IN GENERAL.—From time to time, the Financial Stability Oversight Council shall define, by rule or regulation, the term 'substantial net uncollateralized position' by identifying the level of uncollateralized positions in swaps that a swap participant can hold without posing a threat to the financial system stability of the United States.

''(B) RELIANCE ON ECONOMIC ANALYSIS.—In making determinations under this subsection, the Commission and the Board shall rely on economic analysis provided by economists of the Commission and economists of the Board.

''(n) REPORTING AND RECORDKEEPING.—With respect to its swap business, each swap participant registered with the Commission—

''(1) shall make such reports as are required by the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking;

''(2)(A) for which there is a prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the prudential regulator; and

''(B) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as is be prescribed by the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking; and

''(3) shall keep books and records described in paragraph (2)(B) open to inspection and examination by any representative of the Commission.

''(o) BUSINESS CONDUCT STANDARDS AND REQUIREMENTS.—With respect to its swap business, each swap participant—

''(1) for which there is a prudential regulator, shall comply with such business conduct standards and requirements as the prudential regulator may impose; and

''(2) for which there is no prudential regulator, shall comply with such business conduct standards and requirements as the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking, shall prescribe. The business conduct requirements prescribed under this paragraph shall—

''(A) establish the standard of care required for a swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant; and

''(B) require disclosure by the swap participant to any counterparty to the swap (other than a counterparty that is a swap participant) of—

''(i) information about the material risks and characteristics of the security-based swap; and

''(ii) any material conflicts of interest that the swap participant may have in connection with the security-based swap.

''(p) DOCUMENTATION AND BACK OFFICE STANDARDS.—Each swap participant registered with the Commission—

''(1) for which there is a prudential regulator, shall comply with such documentation and back office standards as the prudential regulator may impose; and

''(2) for which there is no prudential regulator, shall conform with such standards as the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking, may prescribe that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

''(q) CONFIDENTIALITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any information required by Commission rule or regulation to be reported to the Commission under this subsection, except that nothing in this paragraph authorizes the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

''(2) RULE OF CONSTRUCTION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

''(r) SEGREGATION REQUIREMENTS FOR INITIAL MARGIN.—

''(1) SEGREGATION OF INITIAL MARGIN.—

''(A) NOTIFICATION OF RIGHT TO SEGREGATE INITIAL MARGIN.—A swap participant shall notify its counterparty before entering into a security-based swap transaction of the right of the counterparty to require segregation of the funds or other property supplied as initial margin for the purpose of margining, guaranteeing, or securing the obligations of the counterparty.

''(B) SEGREGATION AND MAINTENANCE OF INITIAL MARGIN.—At the request, made before entering into a security-based swap transaction, of a counterparty that provides funds or other property as initial margin to a swap participant for the purpose of margining, guaranteeing, or securing the obligations of the counterparty, the swap participant shall—

''(i) segregate the funds or other property for the benefit of the counterparty; and

''(ii) in accordance with such rules and regulations as the Commission may promulgate jointly with the Commodity Futures Trading Commission, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap participant.

''(C) NOTIFICATION OF EXCESS VARIATION MARGIN.—Pursuant to rules and regulations adopted by the Commission, a swap participant who received funds or other property shall notify any counterparty who provided such funds or other property if the swap participant is holding excess net variation margin from that counterparty.

''(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

''(A) apply only to a security-based swap between a counterparty and a swap participant that is not submitted for clearing to a clearing agency;

''(B) not apply to variation margin payments; and

''(C) not preclude any commercial arrangement regarding—

''(i) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

''(ii) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

''(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—Each segregated account described in paragraph (1), if requested by the counterparty, may be—

''(A) carried by an independent third-party custodian; and

''(B) designated as a segregated account for and on behalf of the counterparty.

''(4) REPORTING REQUIREMENT.—If a counterparty does not choose to require segregation of the funds or other property supplied as initial margin for the purpose of margining, guaranteeing, or securing the obligations of the counterparty, the swap participant shall report to the counterparty of the swap participant on a quarterly basis that the back office procedures of the swap participant relating to initial margin and collateral requirements are in compliance with the agreement of the counterparties.''.

SEC. 766. LARGE SECURITY-BASED SWAP TRADER REPORTING.

The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following:

''SEC. 10B. LARGE SECURITY-BASED SWAP TRADER REPORTING.

''(a) IN GENERAL.—A person that buys or sells a security-based swap shall file or cause to be filed with the Commission a report, if—

''(1) such person directly or indirectly buys or sells a particular security-based swap or class of security-based swap during any day equal to or in excess of any daily reporting threshold that has been fixed, by rule or regulation, with respect to a particular security-based swap or class of security-based swap by the Commission; or

''(2) such person directly or indirectly has or obtains a net position in such security-based swap or class of security-based swap equal to or in excess of any net position reporting threshold that has been fixed, by rule or regulation, with respect to that particular security-based swap or class of security-based swap by the Commission.

''(b) REPORT.—Each report required under subsection (a) shall—

''(1) be in such form and be filed at such time as the Commission shall prescribe, by rule or regulation; and

''(2) contain such information regarding any position or positions in such security-based swap and any group or index of securities on which such security-based swap is based or is referenced, or to which such security-based swap is related, or as to which the issuer of such security is referenced and any other instrument relating to such security or group or index of securities.

''(c) DETERMINATION OF REPORTING THRESHOLDS.—

''(1) CHIEF ECONOMIST.—In determining the reporting thresholds set forth in subsection (a), the Commission shall rely on economic analysis provided by the Chief Economist of the Commission.

''(2) CONSIDERATIONS.—The economic analysis provided under paragraph (1) shall take into account—

''(A) the market oversight benefits and the costs to market participants from preparing reports; and

''(B) the costs to the Commission from processing reports.''.

SEC. 767. CERTAIN REPORTING REQUIREMENTS.

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

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

''(7) For purposes of this subsection, the Commission may determine by rule or regulation that a person is deemed to have acquired beneficial ownership of an equity security upon the purchase or sale of a swap that results in the person acquiring voting or control rights equivalent to those arising from beneficial ownership of the equity security.''; and

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

''(7) For purposes of this subsection, the Commission may determine by rule or regulation that a person is deemed to have acquired beneficial ownership of an equity security upon the purchase or sale of a swap that results in the person acquiring voting or control rights equivalent to those arising from beneficial ownership of the equity security.''.

(b) INSTITUTIONAL INVESTMENT MANAGER REPORTING.—Section 13(f)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(5)) is amended by adding at the end the following:

''(C) For purposes of this subsection, an account shall be deemed to be holding equity securities of a class described in subsection (d)(1), if the account holds swaps that the Commission has determined, by rule or regulation, result in the person acquiring voting or control rights equivalent to those arising from beneficial ownership of the equity security.''.

SEC. 768. PROHIBITION OF MARKET MANIPULATION, FRAUD, AND OTHER MARKET ABUSES.

(a) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—

(1) in the section heading, by inserting ''**AND SECURITY-BASED SWAP**'' after ''**SECURITY**''; and

(2) by adding at the end the following:

''(j) ABUSES RELATED TO SECURITY-BASED SWAPS.—It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for purposes of this subsection, by rule or regulation, define and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.''.

(b) ADDITIONS OF SWAPS TO CERTAIN ANTI-MANIPULATION PROVISIONS.—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) any transaction in connection with any security, whereby any party to such transaction acquires—

''(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

''(B) any security futures product on the security; or

''(C) any swap involving the security or the issuer of the security;

''(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any—

''(A) such put, call, straddle, option, or privilege;

''(B) such security futures product; or

''(C) such swap; or

''(3) any transaction in any security for any account that the person has reason to believe has, and that actually has, directly or indirectly, any interest in any—

''(A) such put, call, straddle, option, or privilege;

''(B) such security futures product with relation to such security; or

''(C) any swap involving such security or the issuer of such security.''.

SEC. 769. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

''(a) DAMAGES AMOUNTS.—

''(1) ACTUAL DAMAGES.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity, but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages to such person on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person, insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder.

''(2) APPLICABILITY OF CERTAIN STATE LAWS.—No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate—

''(A) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutual payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

''(B) any security-based swap between eligible contract participants; or

''(C) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).

''(3) LIMITATION.—Notwithstanding paragraph (2), no provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability.''.

SEC. 770. PROTECTIONS FOR MARKETING SECURITY-BASED SWAPS AND LISTING STANDARDS.

Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(l) TRADING IN SECURITY-BASED SWAPS.—

''(1) IN GENERAL.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

''(2) LISTING STANDARDS REQUIRED.—A national securities exchange or a national securities association registered pursuant to section 15A(a) may trade security-based swaps that conform with listing standards that such exchange or association files with the Commission under section 19(b).''.

SEC. 771. ENFORCEABILITY OF SECURITY-BASED SWAPS.

Section 29(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(b)) is amended by striking ''and (B) that no contract'' and inserting the following: ''(B) that no agreement, contract, or transaction that is a security-based swap shall be void, voidable, or unenforceable by either party to such security-based swap, and no party thereto shall be entitled to rescind, or recover any payment made with respect to, such security-based swap under this section or any other provision of securities laws based solely on the failure of either party to the agreement, contract, or transaction to satisfy its respective obligations under sections 6(l), 13, 15(b), 17, and 17C of this title with respect to such security-based swap, and (C) that no contract''.

SA 3817. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1171, between lines 5 and 6, insert the following:

SEC. 989C. PREVENTING BLANK CHECK BAILOUTS.

(a) SHORT TITLE.—This section may be cited as the ''Preventing Blank Check Bailouts Act of 2010''.

(b) DEFINITIONS.—In this section:

(1) COVERED ENTITY.—The term ''covered entity''—

(A) means a corporation, partnership, association, trust, firm, joint stock company, or other business entity that—

(i) has outstanding not less than $10,000,000,000 in Government assistance; or

(ii) receives Government assistance for the protection of the public; and

(B) does not include a State, a political subdivision of a State, or an entity owned or controlled by a State or a political subdivision of a State.

(2) EXECUTIVE COMPENSATION.—The term ''executive compensation'' includes wages, salary, deferred compensation, benefits, retirement arrangements, options, bonuses, office fixtures, goods and other property, travel, entertainment or vacation expenses, and forms of compensation, obligation, or expense that are not routinely provided to all other employees of a covered entity.

(3) GOVERNMENT ASSISTANCE.—The term ''Government assistance'' means any grants, gifts, loans, equity or debt purchases, or other investments by the United States made or provided to prevent the insolvency of the recipient for the protection of the public.

(4) TAXPAYER PROTECTION ACTION.—The term ''taxpayer protection action'' means a civil action brought under subsection (c)(1).

(c) TAXPAYER PROTECTION ACTIONS.—

(1) IN GENERAL.—The district courts of the United States shall have jurisdiction of a civil action brought by the Attorney General of the United States against a covered entity seeking the abrogation of contracts of the covered entity.

(2) CONSULTATION.—The Attorney General shall consult with the President and the Secretary of the Treasury before bringing a taxpayer protection action.

(3) REMEDIES.—

(A) IN GENERAL.—In a taxpayer protection action, the court may abrogate contracts of the covered entity, including contracts relating to executive compensation, in accordance with subparagraph (B), if the court determines that a covered entity—

(i) would have become insolvent if the covered entity had not received the Government assistance outstanding to or in the covered entity; or

(ii) would become insolvent if the covered entity does not receive Government assistance.

(B) CONTRACTS TO BE ABROGATED.—In evaluating the contracts of a covered entity under this paragraph, a court shall apply a standard to the contracts that seeks to approximate the outcome that would have resulted for the parties to the contract if the covered entity—

(i) had not received the Government assistance; and

(ii) had filed a petition under chapter 7 of title 11, United States Code.

(4) INDIVIDUALS AND ENTITIES AFFECTED.—If the property rights of an individual or entity will be affected by a taxpayer protection action, the individual or entity may—

(A) intervene as a matter of right in the taxpayer protection action; and

(B) upon intervening, assert any claim relating to the property rights of the individual or entity, including a claim—

(i) relating to rights protected under the due process clause of the fifth amendment to the Constitution of the United States or the due process clause of section 1 of the 14th

amendment to the Constitution of the United States; or

(ii) that the covered entity is not insolvent or would not have become insolvent if the covered entity had not received the Government assistance.

SA 3818. Mr. MENENDEZ (for himself and Mr. MERKLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1068, strike line 10 and all that follows through page 1069, line 6, and insert the following:

SEC. 955. EMPLOYEE HEDGING PROHIBITED.

Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) is amended by adding at the end the following:

''(m) HEDGING BY OFFICERS AND DIRECTORS PROHIBITED.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'covered employee' means—

''(i) an officer or director of an issuer of a class of securities registered under this section; and

''(ii) an employee of an issuer of a class of securities registered under this section who receives from the issuer annual wages of $1,000,000 or more;

''(B) the term 'related person' means a related person of an officer, director, or employee described in subparagraph (A), as defined by the Commission, by rule; and

''(C) the term 'wages' has the same meaning as in section 3121(a) of the Internal Revenue Code of 1986, without regard to paragraph (1) thereof.

''(2) PROHIBITION.—A covered employee or related person may not—

''(A) purchase or sell a security (other than a security beneficially owned by the covered employee that is issued by the issuer that employs the covered employee or any affiliate of the issuer), derivative, or other financial product that in any way hedges or limits the financial exposure of the covered employee to declines in the market value of any security beneficially owned by the covered employee that is issued by the issuer that employs the covered employee or any affiliate of the issuer; or

''(B) enter into an agreement with any third party in which a security issued by the issuer that employs the covered employee is a material term of the agreement, if the agreement in any way hedges or limits the financial exposure of the covered employee to declines in the market value of any security beneficially owned by the covered employee that is issued by the issuer that employs the covered employee or any affiliate of the issuer.''.

SA 3819. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 191, after line 24, insert the following new subparagraphs after subparagraph (B) and redesignate the subsequent subparagraphs:

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than management responsible for the failed condition of the covered financial company who have been removed), but only to the extent of $11,725 for each individual (as indexed for inflation by regulation of the Corporation) earned within 180 days before the appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered within 180 days before the appointment of the Corporation as receiver to the extent of the number of employees covered by each such plan multiplied by $11,725 (as indexed for inflation by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C) plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

SA 3820. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 235, between lines 13 and 14, insert the following new subparagraph after subparagraph (C) and redesignate the subsequent subparagraph:

(D) SERVICES PERFORMED UNDER A COLLECTIVE BARGAIN AGREEMENT AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any collective bargaining agreement between a labor organization and a covered financial company, the Corporation as receiver accepts performance of services subject to such agreement before making any determination to exercise the right of repudiation of such collective bargaining agreement under this section—

(i) the persons covered by such collective bargaining agreement shall be paid under the terms of such agreement for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

SA 3821. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1044, between lines 2 and 3, insert the following:

SEC. 939D. EFFECT OF RULE 436(G).

Section 220.436(g) of title 17, Code of Federal Regulations, commonly referred to as ''Rule 436(g) under the Securities Act of 1933'', shall have no force or effect.

SA 3822. Mr. DODD (for himself and Mr. SHELBY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, line 7, insert ''(a) IN GENERAL.—'' before ''In''.

On page 114, line 14, after ''(iii)'' insert ''that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))''.

On page 114, line 21, after ''(12 U.S.C. 2001 et seq.)'' insert '', a governmental entity, or a regulated entity, as defined under section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20))''.

On page 115, strike lines 18 through 20, and insert the following:

(15) COURT.—The term ''Court'' means the United States District Court for the District of Columbia.

On page 115, between lines 22 and 23, insert the following:

(b) DEFINITIONAL CRITERIA.—For purpose of the definition of the term ''financial company'' under subsection (a)(10), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

On page 115, line 23, strike ''**ORDERLY LIQUIDATION AUTHORITY PANEL**'' and insert ''**JUDICIAL REVIEW**''.

On page 115, strike line 24 and all that follows through page 116, line 16.

On page 116, line 17, strike ''(b)'' and insert ''(a)''.

On page 116, strike lines 18 through 20, and insert the following:

(1) PETITION TO DISTRICT COURT.—

(A) DISTRICT COURT REVIEW.—

On page 116, strike line 21 and all that follows through page 117, line 4, and insert the following:

(i) PETITION TO DISTRICT COURT.—Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and

the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as a receiver, the Secretary shall appoint the Corporation as a receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as a receiver.

On page 117, line 9, strike ''Panel'' and insert ''Court''.

On page 117, line 13, strike ''Panel'' and insert ''Court''.

On page 117, beginning on line 16, strike '', within 24 hours of receipt of the petition filed by the Secretary,''.

On page 117, line 21, strike ''is supported'' and all that follows through line 22, and insert ''and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious.''.

On page 117, line 24, strike ''Panel'' and insert ''Court''.

On page 118, line 2, insert ''and satisfies the definition of a financial company under section 201(10)'' after ''danger of default''.

On page 118, lines 3 and 4, strike ''is supported by substantial evidence'' and insert ''is not arbitrary and capricious''.

On page 118, line 4, strike ''Panel'' and insert ''Court''.

On page 118, lines 9 and 10, strike ''is not supported by substantial evidence'' and insert ''is arbitrary and capricious''.

On page 118, line 10, strike ''Panel'' and insert ''Court''.

On page 118, between lines 16 and 17, insert the following:

(v) PETITION GRANTED BY OPERATION OF LAW.—If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this title shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this title.

On page 118, line 18, strike ''Panel'' and insert ''Court''.

On page 118, line 23, strike ''Panel'' and insert ''Court''.

On page 119, line 1, strike ''Panel'' and insert ''Court''.

On page 119, line 12, strike ''PANEL'' and insert ''DISTRICT COURT''.

On page 119, line 16, strike ''Third Circuit'' and insert ''District of Columbia Circuit''.

On page 119, line 17, strike ''Panel'' and insert ''Court''.

On page 119, line 23, strike ''Panel'' and insert ''Court''.

On page 120, strike lines 16 through 17 and insert ''default and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious.''.

On page 121, lines 19 and 20, strike ''is supported by substantial evidence'' and insert ''and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious''.

On page 121, line 21, strike ''(c)'' and insert ''(b)''.

On page 121, line 24, strike ''Panel'' and insert ''Court''.

On page 122, line 5, strike ''subsection (b)(1)'' and all that follows through line 9, and insert ''subsection (a)(1).''.

On page 122, strike lines 14 through 16.

On page 122, line 17, strike ''(C)'' and insert ''(A)''.

On page 122, line 19, strike ''(D)'' and insert ''(B)''.

On page 122, line 21, strike ''(E)'' and insert ''(C)''.

On page 122, line 23, strike ''(F)'' and insert ''(D)''.

On page 123, line 1, strike ''(d)'' and insert ''(c)''.

On page 123, between lines 14 and 15, insert the following:

(d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

(1) BASELINE PERIOD.—Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

(A) to—

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

(3) SECOND EXTENSION OF TIME LIMIT.—

(A) IN GENERAL.—The time limit under this subsection, as extended under paragraph (2), may be extended for up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

(B) ADDITIONAL REPORT REQUIRED.—Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) ONGOING LITIGATION.—The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

(i) the ongoing litigation justifying the need for an extension; and

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) REGULATIONS.—The Corporation may issue regulations governing the termination of receiverships under this title.

(6) NO LIABILITY.—The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

On page 123, line 21, strike ''Panel'' and insert ''Court''.

On page 124, line 11, strike ''Panel'' and insert ''Court''.

On page 126, between lines 9 and 10, insert the following:

(g) STUDY OF PROMPT CORRECTIVE ACTION IMPLEMENTATION BY THE APPROPRIATE FEDERAL AGENCIES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

(B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

(3) REPORT TO COUNCIL.—Not later than 1 years after the date of enactment of this Act, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

(4) COUNCIL REPORT OF ACTION.—Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 120.

On page 128, line 9, strike ''and''.

On page 128, line 12, strike the period at the end and insert ''; and''.

On page 128, between lines 12 and 13, insert the following:

(G) an evaluation of whether the company satisfies the definition of a financial company under section 201.

On page 128, line 16, strike ''202(b)(1)(A)'' and insert ''202(a)(1)(A)''.

On page 129, line 17, strike ''and''.

On page 129, line 21, strike the period at the end and insert ''; and''.

On page 129, between lines 21 and 22, insert the following:

(7) the company satisfies the definition of a financial company under section 201.

On page 132, strike lines 3 through 17, and insert the following:

(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

(ii) describing the plan of, and actions taken by, the Corporation to wind down the covered financial company;

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366 of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

(iv) describing the reasons for the provision of any funding to the receivership out of the Fund;

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

On page 132, between lines 22 and 23, insert the following:

(C) CONGRESSIONAL TESTIMONY.—The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

On page 135, line 15, strike ''section 202(b)'' and insert ''section 202(a)''.

On page 136, line 9, strike ''with the strong presumption'' and insert ''so''.

On page 138, line 16, insert after the period the following: ''All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

''(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

''(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

''(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

''(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

''(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

''(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.''.

On page 138, line 15, strike ''section 210(n)(13)'' and insert ''section 210(n)(11)''.

On page 147, line 3, insert before the period the following: '', and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act''.

On page 187, line 18, strike ''(B), and (C)'' and insert ''(B), (C), and (D)''.

On page 187, line 20, strike ''(D)'' and insert ''(E)''.

On page 192, insert before line 1 the following:

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of $11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by $11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

On page 192, line 1, strike ''(C)'' and insert ''(E)''.

On page 192, beginning on line 3, strike ''(D) or (E)'' and insert ''(F), (G), or (H)''.

On page 192, line 5, strike ''(D)'' and insert ''(F)''.

On page 192, between lines 7 and 8, insert the following:

(G) Any wages, salaries, or commissions including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

On page 192, line 7, strike ''subparagraph (E)).'' and insert ''subparagraph (G) or (H)).''.

On page 192, line 8, strike ''(E)'' and insert ''(H)''.

On page 193, line 18, strike ''(ii)'' and insert the following:

''(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

''(iii)''.

On page 228, line 17, strike ''5th'' and insert ''3rd''.

On page 236, line 20, strike ''5th'' and insert ''3rd''.

On page 237, line 14, strike ''5th'' and insert ''3rd''.

On page 240, line 8, strike ''section 202(c)(1)'' and insert ''section 202(a)(1)''.

On page 246, strike line 21 and all the follows through page 247, line 5, and insert the following:

(B) LIMITATIONS.—

(i) PROHIBITION.—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

On page 254, line 24, strike ''(13)'' and insert ''(11)''.

On page 260, line 4, strike ''subsection (o)(1)(E)(ii))'' and insert ''subsection (o)(1)(D)(ii))''.

On page 263, line 16, strike ''(13)'' and insert ''(11)''.

On page 278, line 5, strike ''(9)'' and insert ''(6)''.

On page 278, line 10, strike ''(9)'' and insert ''(6)''.

On page 278, strike line 18 and all that follows through page 279, line 20.

On page 279, line 21, strike ''(8)'' and insert ''(4)''.

On page 280, line 5, strike ''(9)'' and insert ''(5)''.

On page 281, line 6, strike the period and insert the following: '', plus an interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

''(i) the current average rate on an index of corporate obligations of comparable maturity; and

''(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.''.

On page 281, strike line 20 and all that follows through page 282, line 8, and insert the following:

(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

On page 282, line 9, strike ''(11)'' and insert ''(7)''.

On page 282, strike lines 14 through 19.

On page 282, line 20, strike ''(13)'' and insert ''(8)''.

On page 283, strike lines 5 through 14 and insert the following:

(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

On page 283, line 24, strike ''(14)'' and insert ''(9)''.

On page 284, line 6, insert '', including taking any actions specified'' before ''under 204(d)''.

On page 284, line 7, insert before the period '', and payments to third parties''.

On page 284, between lines 10 and 11, insert the following:

(10) IMPLEMENTATION EXPENSES.—

(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.—As used in this paragraph, the term ''implementation expenses''—

(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

On page 284, strike line 13 and all that follows through page 285, line 2.

On page 285, line 3, strike ''(B)'' and insert ''(A)''.

On page 285, line 10, strike ''(C)'' and insert ''(B)''.

On page 285, line 10, strike ''ADDITIONAL''.

On page 285, line 13, strike ''(E)'' and insert ''(D)''.

On page 285, strike lines 14 through 23.

On page 285, line 24, strike ''(iii)''.

On page 285, line 21, strike ''during the initial capitalization period''.

On page 286, strike line 11 and all that follows through page 287, line 2, and insert the following:

(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (C), the Corporation shall—

(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (C), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

(II) financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies.

(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (E)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

On page 287, strike lines 3 through 10.

On page 289, strike line 25, and insert ''the Corporation, in consultation with the Secretary, deems appropriate.''.

On page 290, beginning on line 9, strike '', in consultation with the Secretary and the Council,''.

On page 290, line 11, insert after the period the following: ''The Corporation shall consult with the Secretary in the development and finalization of such regulations.''.

On page 295, between lines 19 and 20, insert the following:

(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term ''compensation'' to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

On page 296, between lines 15 and 16, insert the following:

(d) FDIC INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) FUNDING.—

(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

(e) TREASURY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing—

(A) a description of actions taken by the Secretary under this title;

(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

(f) PRIMARY FINANCIAL REGULATORY AGENCY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) REPORTS AND TESTIMONY.—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

(a) NO OTHER FUNDING.—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

(b) LIMIT ON GOVERNMENTAL ACTIONS.—No governmental entity may take any action to circumvent the purposes of this title.

(c) CONFLICT OF INTEREST.—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

SEC. 213. BAN ON SENIOR EXECUTIVES AND DIRECTORS.

(a) PROHIBITION AUTHORITY.—The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) AUTHORITY TO ISSUE ORDER.—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any clause of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) AUTHORIZED ACTIONS.—

(1) IN GENERAL.—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) PROCEDURES.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

(d) REGULATIONS.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

On page 1522, line 11, strike ''The third'' and insert the following:

''(a) FEDERAL RESERVE ACT.—The third''.

On page 1528, line 3, strike the end quotation marks and the final period and insert the following:

''(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 203 of the Restoring American Financial Stability Act of 2010, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under sections 210(n) and 210(o) of the Restoring American Financial Stability Act of 2010.''.

(b) CONFORMING AMENDMENT.—Section 507(a)(2) of title 11, United States Code, is amended by inserting ''claims of any Federal reserve bank related to loans made through programs or facilities authorized under the third undesignated paragraph of the Federal Reserve Act (12 U.S.C. 343),'' after ''this title,''.

On page 1523, line 17, strike ''of sufficient quality'' and insert ''sufficient''.

On page 1523, line 18, insert after the period the following: ''The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph.''.

On page 1523, line 19, strike ''(ii)'' and insert the following:

''(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding.

''(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

''(iv)''.

On page 1523, line 18: insert ''and that any such program is terminated in a timely and orderly fashion'' before ''losses''.

On page 1524, line 11, strike ''assistance,'' and all that follows through line 12 and insert ''assistance.''.

On page 1525, strike line 21 and all that follows through page 1528, line 3, and insert the following:

''(D) The information submitted to Congress under subparagraph (C) related to—

''(i) the identity of the participants in an emergency lending program or facility commenced under this paragraph;

''(ii) the amounts borrowed by each participant in any such program or facility;

''(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility, shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons and Ranking Members of the Committees described in subparagraph (C).''.

On page 1537, line 23, insert before the period the following: ''and a request for approval of such plan''.

On page 1537, line 23, strike ''Upon'' and all that follows through page 1538, line 6, and insert the following: ''The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.''.

On page 1538, line 16, strike ''Upon'' and all that follows through page 1547, line 6 and insert the following: ''The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

''(d) RESOLUTION OF APPROVAL.—

''(1) ADDITIONAL DEBT GUARANTEE AUTHORITY.—A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

''(2) FAST TRACK CONSIDERATION IN SENATE.—

''(A) RECONVENING.—Upon receipt of a request under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

''(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

''(C) FLOOR CONSIDERATION.—

''(i) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a request under subsection (c), and ending on the 7th day after that date (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

''(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

''(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the

conclusion of the debate on the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

''(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

''(3) RULES.—

''(A) COORDINATION WITH ACTION BY HOUSE OF REPRESENTATIVES.—If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

''(i) The joint resolution of the House of Representatives shall not be referred to a committee.

''(ii) With respect to a joint resolution of the Senate—

''(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

''(II) the vote on passage shall be on the joint resolution of the House of Representatives.

''(B) TREATMENT OF JOINT RESOLUTION OF HOUSE OF REPRESENTATIVES.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House of Representatives shall be entitled to expedited floor procedures under this subsection.

''(C) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

''(D) RULES OF THE SENATE.—This subsection is enacted by Congress—

''(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a joint resolution, and it supersedes other rules, only to the extent that it is inconsistent with such rules; and

''(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

''(4) DEFINITION.—As used in this subsection, the term 'joint resolution' means only a joint resolution—

''(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

''(B) that does not have a preamble;

''(C) the title of which is as follows: 'Joint resolution relating to the approval of a plan to guarantee obligations under section 1155 of the Restoring American Financial Stability Act of 2010'; and

''(D) the matter after the resolving clause of which is as follows: 'That Congress approves the obligation of any amount described in section 1155(c) of the Restoring American Financial Stability Act of 2010.'.''.

On page 1550, strike lines 1 through 12, and insert the following:

(3) LIQUIDITY EVENT.—The term ''liquidity event'' means—

(A) an exceptional and broad reduction in the general ability of financial market participants—

(i) to sell financial assets without an unusual and significant discount; or

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.

On page 1550, strike line 24 and all that follows through page 1551, line 3, and insert the following:

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting ''for which the Corporation has been appointed receiver'' before ''would have serious''; and

(B) in the undesignated matter following subclause (II), by inserting ''for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver'' after ''provide assistance under this section''; and

(2) in clause (v)(I), by striking ''The'' and inserting ''Not later than 3 days after making a determination under clause (i), the''.

SA 3823. Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. _____. HEALTH INSURANCE INDUSTRY ANTITRUST ENFORCEMENT ACT.

(a) SHORT TITLE.—This section may be cited as the ''Health Insurance Industry Antitrust Enforcement Act''.

(b) RESTORING THE APPLICATION OF ANTITRUST LAWS TO HEALTH SECTOR INSURERS.—

(1) AMENDMENT TO MCCARRAN-FERGUSON ACT.—Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013), commonly known as the McCarran-Ferguson Act, is amended by adding at the end the following:

''(c) Nothing contained in this Act shall modify, impair, or supersede the operation of any of the antitrust laws with respect to the business of health insurance. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.''.

(2) RELATED PROVISION.—For purposes of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition, section 3(c) of the McCarran-Ferguson Act shall apply with respect to the business of health insurance without regard to whether such business is carried on for profit, notwithstanding the definition of ''Corporation'' contained in section 4 of the Federal Trade Commission Act.

SA 3824. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title I and insert the following:

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the ''Financial Stability Act of 2010''.

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

(2) CHAIRPERSON.—The term ''Chairperson'' means the Chairperson of the Council.

(3) MEMBER AGENCY.—The term ''member agency'' means an agency represented by a voting member of the Council.

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

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

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

(ii) substantially engaged in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

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

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

(ii) substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) NONBANK FINANCIAL COMPANY.—The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

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

(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the

criteria to determine whether a company is substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) for purposes of the definitions of the terms ''U.S. nonbank financial company'' and ''foreign nonbank financial company'' under subsection (a)(4).

(c) FOREIGN NONBANK FINANCIAL COMPANIES.—For purposes of the authority of the Board of Governors under this title with respect to foreign nonbank financial companies, references in this title to ''company'' or ''subsidiary'' include only the United States activities and subsidiaries of such foreign company.

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

(b) MEMBERSHIP.—The Council shall consist of the following members, who shall each have 1 vote on the Council shall be:

(1) The Secretary of the Treasury, who shall serve as Chairperson of the Council.

(2) The Chairman of the Board of Governors.

(3) The Comptroller of the Currency.

(4) The Director of the Bureau.

(5) The Chairman of the Commission.

(6) The Chairperson of the Corporation.

(7) The Chairperson of the Commodity Futures Trading Commission.

(8) The Director of the Federal Housing Finance Agency.

(9) An independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the members then serving.

(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Independent Member of the Financial Stability Oversight Council (1).''.

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—

(1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected bank holding companies or nonbank financial companies;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial markets.

(2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies and other Federal and State financial regulatory agencies to assess risks to the United States financial system;

(B) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(C) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(D) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(E) identify gaps in regulation that could pose risks to the financial stability of the United States;

(F) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, pursuant to section 113;

(G) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(H) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII), and require such utilities and activities to be subject to standards established by the Board of Governors;

(I) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(J) make determinations regarding exemptions in title VII, where necessary;

(K) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(L) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market developments and potential emerging threats to the financial stability of the United States;

(iii) all determinations made under section 113 or title VIII, and the basis for such determinations; and

(iv) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from member agencies, as necessary to monitor the financial services marketplace to identify potential risks to the financial stability of the United States.

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law any member agencies are authorized to submit information to the Council.

(3) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a nonbank financial company pose a threat to the financial stability of the United States, based on discussions with management and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(4) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council and the member agencies shall maintain the confidentiality of any data, information, and reports submitted under this subsection and subtitle B.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any

data or information submitted under this subsection and subtitle B.

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(F) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

(F) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subsection (b), the Council may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on

the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Department of the Treasury.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this section should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, shall require the subject company—

(1) to terminate one or more activities;

(2) to impose conditions on the manner in which the company conducts one or more activities; or

(3) if the Board of Governors determines that such action is inadequate to mitigate a threat to the financial stability of the United States in its recommendation, to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) FACTORS FOR CONSIDERATION.—The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and in a decision described in subsection (b).

(d) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle

of national treatment and competitive equity.

Subtitle B—Financial Information and Data

SEC. 151. FINANCIAL INFORMATION AND DATA.

(a) AUTHORITY TO OBTAIN INFORMATION BY REGULATION.—

(1) IN GENERAL.—The Council is authorized to receive, and may request the production of, any information and data from Council member agencies, as necessary to identify potential risks to United States financial system stability.

(2) SUBMISSION BY COUNCIL MEMBERS.—Notwithstanding any other provision of law, any Council member agency, upon request by the Council, shall provide information and data to the Council, and the Council shall maintain the confidentiality of such information and data.

(3) FINANCIAL INFORMATION AND DATA COLLECTION.—

(A) IN GENERAL.—The Council may require, by rule, the submission of periodic and other reports from any regulated entity, solely for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the financial company itself, poses a risk to United States financial system stability.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from an regulated entity, the Council shall coordinate and shall, whenever possible, rely on information and data already being collected by or provided to such agency.

(C) MITIGATION OF REQUIREMENTS IN CASE OF FOREIGN FINANCIAL PARENTS.—Before requiring the submission of reports from anY regulated entity that is affiliated with a holding company or parent company that is a foreign company, the Council shall, to the extent appropriate—

(i) coordinate with any appropriate foreign regulator of such company and any appropriate multilateral organization;

(ii) request information regarding such company from such foreign regulator; and

(iii) whenever possible, rely on information already being collected by such foreign regulator or multilateral organizational.

(D) VOLUNTARY INFORMATION AND DATA COLLECTION FROM NON-REGULATED ENTITIES.—The Council is authorized to request information and data from non regulated entities. To the extent possible, the Council shall minimize information and data requests from non regulated entities, and in all cases, such information and data requests shall be limited to information and data requests relevant to maintaining United States financial system stability. Nothing in this subparagraph shall be construed to require the provision of information or data by any non regulated entity that is not otherwise required to provide such information or data under this section or any other provision of law.

(4) DEFINITION.—As used in this subsection, the term ''regulated entity'' means any entity, other than an individual, that is regulated and supervised by a Council member agency.

(b) ADDITIONAL PROVISIONS.—

(1) INFORMATION AND DATA SHARING.—The Chairperson of the Council, in consultation with the other members of the Council, may—

(A) establish procedures, databases, and information warehouses to share information and data collected by the Council under this section with the members of the Council;

(B) develop an electronic process for sharing all information and data collected by the Council with the Council member agencies;

(C) designate the format in which requested information and data shall be submitted to the Council, including any electronic, digital, or other format that facilitates the use of such information and data by the Council in its analyses.

(2) APPLICABLE PRIVILEGES NOT WAIVED.—A Federal financial regulator, State financial regulator, United States financial company, foreign financial company operating in the United States, financial market utility, or other person shall not be compelled to waive, and shall not be deemed to have waived, any privilege otherwise applicable to any information or data by transferring the information or data to, or permitting that information or data to be used by—

(A) the Council;

(B) any Federal financial regulator or State financial regulator, in any capacity; or

(C) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

(3) CONFIDENTIALITY OF INFORMATION.—

(A) DISCLOSURE EXEMPTION.—The Council shall maintain the confidentiality of information received under this subtitle, and any information obtained by the Council under this subtitle shall be exempt from the disclosure requirements under section 552 of title 5, United States Code.

(B) COUNCIL CONFIDENTIALITY.—Notwithstanding any other provision of law, the Council may not be compelled to disclose any report or information contained therein filed with the Council under this subtitle, except that nothing in this subtitle authorizes the Council—

(i) to withhold information from Congress, upon an agreement of confidentiality; or

(ii) prevent the Council from complying with—

(I) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

(II) an order of a court of the United States in an action brought by the United States or the Council.

(C) PROTECTION OF INFORMATION AND DATA.—The Council shall maintain appropriate data security measures and ensure the protection of any proprietary information or data of any regulated entity or nonregulated entity.

(4) CONSULTATION WITH FOREIGN GOVERNMENTS.—Under the supervision of the President, and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to risks to United States financial system stability.

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK FINANCIAL COMPANIES BY THE BOARD OF GOVERNORS.

(a) REPORTS.—

(1) IN GENERAL.—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and

(B) compliance by the company or subsidiary with the requirements of this subtitle.

(2) USE OF EXISTING REPORTS AND INFORMATION.—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(B) information otherwise obtainable from Federal or State regulatory agencies;

(C) information that is otherwise required to be reported publicly; and

(D) externally audited financial statements of such company or subsidiary.

(3) AVAILABILITY.—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) EXAMINATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to determine—

(A) the nature of the operations and financial condition of the company and such subsidiary;

(B) the financial, operational, and other risks within the company that may pose a threat to the safety and soundness of such company or to the financial stability of the United States;

(C) the systems for monitoring and controlling such risks; and

(D) compliance by the company with the requirements of this subtitle.

(2) USE OF EXAMINATION REPORTS AND INFORMATION.—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any depository institution subsidiary or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) COORDINATION WITH PRIMARY FINANCIAL REGULATORY AGENCY.—The Board of Governors shall—

(1) provide to the primary financial regulatory agency for any company or subsidiary, reasonable notice before requiring a report, requesting information, or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the extent possible.

SEC. 162. ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

(1) REFERRAL.—If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary

financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.

SEC. 163. ACQUISITIONS.

(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) STANDARDS FOR REVIEW.—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES.

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards established under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000, but the Board of Governors may establish an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under subsections (b) through (f).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures; and

(iii) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to foreign nonbank financial companies supervised by the Board of Governors and to foreign-based bank holding companies, the Board of Governors shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection; and

(C) take into account any recommendations of the Council under section 115.

(4) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may promulgate regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In establishing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of a conversion under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this section by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of

Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company, as applicable, of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a time frame determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), ''credit exposure'' to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company;

(C) all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(D) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(E) all purchases of or investment in securities issued by the company;

(F) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(G) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of ''credit exposure'' for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(d)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(h) STRESS TESTS.—The Board of Governors shall conduct analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether the companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions. The Board of Governors may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States.

SEC. 166. EARLY REMEDIATION REQUIREMENTS.

(a) IN GENERAL.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a), except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) PURPOSE OF THE EARLY REMEDIATION REQUIREMENTS.—The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) REMEDIATION REQUIREMENTS.—The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration

plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

SEC. 167. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—

(1) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Board of Governors may require such company to establish and conduct such activities that are determined to be financial in nature or incidental thereto in an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days after the date on which the nonbank financial company supervised by the Board of Governors was notified of the determination under section 113(a).

(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities conducted for a nonbank financial company supervised by the Board of Governors or any affiliate, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity of such company during the year prior to the date of enactment of this Act, such company may continue to engage in such activity as long as at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to such company, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(c) REGULATIONS.—The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (a); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

SEC. 168. REGULATIONS.

Except as otherwise specified in this subtitle, not later than 18 months after the transfer date, the Board of Governors shall issue final regulations to implement this subtitle and the amendments made by this subtitle.

SEC. 169. AVOIDING DUPLICATION.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this subtitle that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

SEC. 170. SAFE HARBOR.

(a) REGULATIONS.—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) CONSIDERATIONS.—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) UPDATE.—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(e) TRANSITION PERIOD.—No revisions under subsection (d) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(f) REPORT.—The Chairperson of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of the regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

SA 3825. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title I and insert the following:

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the ''Financial Stability Act of 2010''.

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

(2) CHAIRPERSON.—The term ''Chairperson'' means the Chairperson of the Council.

(3) MEMBER AGENCY.—The term ''member agency'' means an agency represented by a voting member of the Council.

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

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

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

(ii) substantially engaged in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

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

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

(ii) substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) NONBANK FINANCIAL COMPANY.—The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

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

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

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

(c) FOREIGN NONBANK FINANCIAL COMPANIES.—For purposes of the authority of the Board of Governors under this title with respect to foreign nonbank financial companies, references in this title to ''company'' or ''subsidiary'' include only the United States activities and subsidiaries of such foreign company.

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

(b) MEMBERSHIP.—The Council shall consist of the following members:

(1) VOTING MEMBERS.—The voting members, who shall each have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;
(B) the Chairman of the Board of Governors;
(C) the Comptroller of the Currency;
(D) the Director of the Bureau;
(E) the Chairman of the Commission;
(F) the Chairperson of the Corporation;
(G) the Chairperson of the Commodity Futures Trading Commission;
(H) the Director of the Federal Housing Finance Agency; and
(I) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) NONVOTING MEMBERS.—The Director of the Office of Financial Research—
(A) shall serve in an advisory capacity as a nonvoting member of the Council; and
(B) may not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council.

(c) TERMS; VACANCY.—
(1) TERMS.—The independent member of the Council shall serve for a term of 6 years.
(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.
(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—
(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.
(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the members then serving.

(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—
(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.
(2) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:
''Independent Member of the Financial Stability Oversight Council (1).''.

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—
(1) IN GENERAL.—The purposes of the Council are—
(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected bank holding companies or nonbank financial companies;
(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and
(C) to respond to emerging threats to the stability of the United States financial markets.

(2) DUTIES.—The Council shall, in accordance with this title—
(A) collect information from member agencies and other Federal and State financial regulatory agencies and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;
(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;
(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;
(D) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;
(E) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;
(F) identify gaps in regulation that could pose risks to the financial stability of the United States;
(G) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, pursuant to section 113;
(H) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;
(I) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII), and require such utilities and activities to be subject to standards established by the Board of Governors;
(J) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;
(K) make determinations regarding exemptions in title VII, where necessary;
(L) provide a forum for—
(i) discussion and analysis of emerging market developments and financial regulatory issues; and
(ii) resolution of jurisdictional disputes among the members of the Council; and
(M) annually report to and testify before Congress on—
(i) the activities of the Council;
(ii) significant financial market developments and potential emerging threats to the financial stability of the United States;
(iii) all determinations made under section 113 or title VIII, and the basis for such determinations; and
(iv) recommendations—
(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;
(II) to promote market discipline; and
(III) to maintain investor confidence.

(b) AUTHORITY TO OBTAIN INFORMATION.—
(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from the Office of Financial Research and member agencies, as necessary—
(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or
(B) to otherwise carry out any of the provisions of this title.
(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law, the Office of Financial Research and any member agency are authorized to submit information to the Council.
(3) FINANCIAL DATA COLLECTION.—
(A) IN GENERAL.—The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company regulated by the Board of Governors or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or such nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.
(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.
(4) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraph (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this subsection and subtitle B.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this subsection and subtitle B shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(F) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

(F) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the

United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to

appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council and the Office of Financial Research shall be treated as expenses of, and paid by, the Department of the Treasury.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this section should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, shall require the subject company—

(1) to terminate one or more activities;

(2) to impose conditions on the manner in which the company conducts one or more activities; or

(3) if the Board of Governors determines that such action is inadequate to mitigate a threat to the financial stability of the United States in its recommendation, to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing

was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) FACTORS FOR CONSIDERATION.—The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and in a decision described in subsection (b).

(d) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle of national treatment and competitive equity.

Subtitle B—Office of Financial Research

SEC. 151. DEFINITIONS.

For purposes of this subtitle—

(1) the terms ''Office'' and ''Director'' mean the Office of Financial Research established under this subtitle and the Director thereof, respectively;

(2) the term ''financial company'' has the same meaning as in title II, and includes an insured depository institution and an insurance company;

(3) the term ''Research and Analysis Center'' means the research and analysis center established under section 154;

(4) the term ''financial transaction data'' means the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation;

(5) the term ''position data''—

(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;

(6) the term ''financial contract'' means a legally binding agreement between 2 or more counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

(7) the term ''financial instrument'' means a financial contract in which the terms and conditions are publicly available, and the roles of one or more of the counterparties are assignable without the consent of any of the other counterparties (including common stock of a publicly traded company, government bonds, or exchange traded futures and options contracts).

SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Financial Research.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) TERM OF SERVICE.—The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

(3) EXECUTIVE LEVEL.—The Director shall be compensated at level III of the Executive Schedule.

(4) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

(5) RESPONSIBILITIES, DUTIES, AND AUTHORITY.—The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this subtitle.

(c) BUDGET.—The Director, with the approval of the Chairperson, shall establish the annual budget of the Office.

(d) OFFICE PERSONNEL.—

(1) IN GENERAL.—The Director, with approval of the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.

(2) COMPENSATION.—The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) NON-COMPETE.—The Director and any staff of the Office who has had access to the transaction or position data or other business confidential information about financial entities required to report to the Office, may not, for a period of 1 year after last having access to such transaction or position data or business confidential information, be employed by or provide advice or consulting services to a financial company, regardless of whether that entity is required to report to the Office. For staff whose access to business confidential information was limited, the Director may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

(g) EXECUTIVE SCHEDULE COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

''Director of the Office of Financial Research.''.

SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.

(a) PURPOSE AND DUTIES.—The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in subtitle A, and to support member agencies, by—

(1) collecting data on behalf of the Council, and providing such data to the Council and member agencies;

(2) standardizing the types and formats of data reported and collected;

(3) performing applied research and essential long-term research;

(4) developing tools for risk measurement and monitoring;

(5) performing other related services;

(6) making the results of the activities of the Office available to financial regulatory agencies; and

(7) assisting such member agencies in determining the types and formats of data authorized by this Act to be collected by such member agencies.

(b) ADMINISTRATIVE AUTHORITY.—The Office may share data and information, including software developed by the Office, with the Council and member agencies, which shared data, information, and software—

(1) shall be maintained with at least the same level of security as is used by the Office; and

(2) may not be shared with any individual or entity.

(c) GUIDANCE.—

(1) SCOPE.—The Office, in consultation with the Chairperson, shall issue guidance to carry out the purposes and duties described in paragraphs (1), (2), and (7) of subsection (a).

(2) STANDARDIZATION.—Member agencies, in consultation with the Office, shall work to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2).

(d) TESTIMONY.—The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and the Research and Analysis Center, and the assessment of the Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

(e) ADDITIONAL REPORTS.—The Director may, with the approval of the Chairperson, provide additional reports to Congress concerning the financial stability of the United States.

SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBILITIES OF RESEARCH AND ANALYSIS CENTER.

(a) IN GENERAL.—There is established within the Office, to carry out the programmatic responsibilities of the Office, the Research and Analysis Center.

(b) RESEARCH AND ANALYSIS CENTER.—The Research and Analysis Center, on behalf of the Council, shall develop and maintain independent analytical capabilities and computing resources to develop and maintain metrics and reporting systems for risks to the financial stability of the United States.

(c) REPORTING RESPONSIBILITIES.—

(1) REQUIRED REPORTS.—Not later than 2 years after the date of enactment of this Act, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

(2) CONTENT.—Each report required by this subsection shall assess the state of the United States financial system, including—

(A) an analysis of any threats to the financial stability of the United States;

(B) the status of the efforts of the Office in meeting the mission of the Office; and

(C) key findings from the research and analysis of the financial system by the Office.

SEC. 155. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Office—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Office shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) RECRUITMENT AND RETENTION PLAN.—The Office shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

(2) the rights of employees under chapter 71 of title 5, United States Code.

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK FINANCIAL COMPANIES BY THE BOARD OF GOVERNORS.

(a) REPORTS.—

(1) IN GENERAL.—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and

(B) compliance by the company or subsidiary with the requirements of this subtitle.

(2) USE OF EXISTING REPORTS AND INFORMATION.—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(B) information otherwise obtainable from Federal or State regulatory agencies;

(C) information that is otherwise required to be reported publicly; and

(D) externally audited financial statements of such company or subsidiary.

(3) AVAILABILITY.—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) EXAMINATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to determine—

(A) the nature of the operations and financial condition of the company and such subsidiary;

(B) the financial, operational, and other risks within the company that may pose a threat to the safety and soundness of such company or to the financial stability of the United States;

(C) the systems for monitoring and controlling such risks; and

(D) compliance by the company with the requirements of this subtitle.

(2) USE OF EXAMINATION REPORTS AND INFORMATION.—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any depository institution subsidiary or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) COORDINATION WITH PRIMARY FINANCIAL REGULATORY AGENCY.—The Board of Governors shall—

(1) provide to the primary financial regulatory agency for any company or subsidiary, reasonable notice before requiring a report, requesting information, or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the extent possible.

SEC. 162. ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

(1) REFERRAL.—If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.

SEC. 163. ACQUISITIONS.

(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) STANDARDS FOR REVIEW.—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES.

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards established under subsections (b) through (f) shall not apply to

any bank holding company with total consolidated assets of less than $50,000,000,000, but the Board of Governors may establish an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under subsections (b) through (f).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures; and

(iii) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to foreign nonbank financial companies supervised by the Board of Governors and to foreign-based bank holding companies, the Board of Governors shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection; and

(C) take into account any recommendations of the Council under section 115.

(4) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may promulgate regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In establishing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of a conversion under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this section by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company, as applicable, of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a time frame determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), ''credit exposure'' to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company;

(C) all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(D) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(E) all purchases of or investment in securities issued by the company;

(F) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(G) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of ''credit exposure'' for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(d)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(h) STRESS TESTS.—The Board of Governors shall conduct analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether the companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions. The Board of Governors may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States.

SEC. 166. EARLY REMEDIATION REQUIREMENTS.

(a) IN GENERAL.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a), except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) PURPOSE OF THE EARLY REMEDIATION REQUIREMENTS.—The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) REMEDIATION REQUIREMENTS.—The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

SEC. 167. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—

(1) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Board of Governors may require such company to establish and conduct such activities that are determined to be financial in nature or incidental thereto in an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days after the date on which the nonbank financial company supervised by the Board of Governors was notified of the determination under section 113(a).

(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities conducted for a nonbank financial company supervised by the Board of Governors or any affiliate, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity of such company during the year prior to the date of enactment of this Act, such company may continue to engage in such activity as long as at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to such company, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(c) REGULATIONS.—The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (a); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

SEC. 168. REGULATIONS.

Except as otherwise specified in this subtitle, not later than 18 months after the transfer date, the Board of Governors shall issue final regulations to implement this subtitle and the amendments made by this subtitle.

SEC. 169. AVOIDING DUPLICATION.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this subtitle that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

SEC. 170. SAFE HARBOR.

(a) REGULATIONS.—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) CONSIDERATIONS.—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) UPDATE.—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf

of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(e) TRANSITION PERIOD.—No revisions under subsection (d) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(f) REPORT.—The Chairperson of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of the regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

SA 3826. Mr. SHELBY (for himself, Mr. MCCONNELL, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, Mr. JOHANNS, Mrs. HUTCHISON, Mr. VITTER, Mr. BUNNING, Mr. CHAMBLISS, Mr. CORNYN, Mr. BOND, Mr. ENZI, and Mr. ALEXANDER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title X and insert the following:

TITLE X—DIVISION FOR CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the ''Consumer Financial Protection Act of 2010''.

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) COVERED PERSON.—The term covered person means—

(A) a depository institution; or

(B) a person other than a depository institution that is subject to one or more of the enumerated consumer protection statutes.

(2) DESIGNATED TRANSFER DATE.—The term ''designated transfer date'' means the date established under section 1042.

(3) DIVISION.—The term ''Division'' means the Division for Consumer Financial Protection.

(4) ENUMERATED CONSUMER PROTECTION STATUTES.—The term ''enumerated consumer protection statute'' means—

(A) subsections (c) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.);

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), other than sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Homeowners Protection Act of 1998 (12 U.S.C. 4901, et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809);

(J) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(K) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(L) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(M) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(N) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(O) the Truth in Savings Act (12 U.S.C. 4301 et seq.); and

(P) the authority of the Federal Trade Commission, the Board of Governors, the Office of Thrift Supervision, and the National Credit Union Administration to prohibit unfair or deceptive acts or practices under section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f))—

(i) only to the same extent that the Board of Governors, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission could exercise such authority over covered persons on the day before the designated transfer date; and

(ii) except that such authority shall not extend to persons or activities covered under the Fair Credit Reporting Act that do not meet the definition in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(5) MORTGAGE LOAN ORIGINATOR.—The term ''mortgage loan originator'' means any person (other than an individual) that takes applications for residential mortgage transactions and offers or negotiates terms of residential mortgage transactions.

(6) NONDEPOSITORY COVERED PERSON.—The term ''nondepository covered person'' means any entity that—

(A) is not a depository institution;

(B) is not an affiliate or subsidiary of a depository institution;

(C) is not subject to supervision or enforcement by a Federal banking regulator; and

(D) is a financial services provider subject to the enumerated consumer protection statutes.

(7) PERSON.—The term ''person'' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(8) PRUDENTIAL REGULATOR.—The term ''prudential regulator'' means the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, as appropriate, with respect to depository institutions and affiliates of depository institutions supervised by such agencies.

(9) RESIDENTIAL MORTGAGE TRANSACTION.—The term ''residential mortgage transaction'' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Subtitle A—Division of Consumer Protection

SEC. 1011. ESTABLISHMENT OF THE DIVISION.

(a) DIVISION ESTABLISHED.—There is established within the Federal Deposit Insurance Corporation the Division for Consumer Protection, which shall regulate, by rule or order, consumer financial products and services under the enumerated consumer protection statutes, and where applicable, as provided for in section 1024, enforce the enumerated consumer protection statutes.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

(1) DIRECTOR.—The Division shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 4 years.

(2) DEPUTY DIRECTOR.—The Director shall designate a Deputy Director.

(3) ACTING DIRECTOR.—In the event of a vacancy in the position of the Director or during the absence or disability of the Director, the Deputy Director shall act as Director.

(4) COMPENSATION.—The Director shall be compensated at a rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

SEC. 1012. ADMINISTRATION.

(a) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a unit, the functions of which shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services; and

(C) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services.

(2) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit, the functions of which shall include establishing a single, toll-free telephone number, a website, and database to facilitate the centralized collection, monitoring, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with other Federal agencies to route complaints to other Federal regulators, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Division systems; and

(ii) the State agency has satisfied any conditions of participation in the system that the Division may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources.

(C) REPORTS TO CONGRESS.—The Director shall present an annual report to Congress, not later than March 31 of each year on the complaints received by the Division in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Division shall share consumer complaint information with prudential regulators, other Federal agencies, and State agencies, consistent with Federal law applicable to personally identifiable information. The prudential regulators and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Division, consistent with Federal law applicable to personally identifiable information.

(b) OFFICE OF FINANCIAL LITERACY.—

(1) ESTABLISHMENT.—The Division shall establish an Office of Financial Literacy, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions. The Director shall serve as the Vice Chairperson on the

Financial Literacy and Education Commission established under section 513 of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702).

(2) OTHER DUTIES.—The Office of Financial Literacy shall develop and implement a strategy to improve financial literacy, consistent with the National Strategy for Financial Education.

(3) COORDINATION.—The Office of Financial Literacy shall coordinate with other units within the Division in carrying out its functions, including working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

SEC. 1013. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Division in the exercise of its functions under this title, the enumerated consumer protection statutes, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, and consumer financial products or services and seek representation of the interests of nondepository covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but not less frequently than twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1014. COORDINATION.

The Director shall coordinate with other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

SEC. 1015. FUNDING.

(a) FEES AND ASSESSMENTS.—

(1) IN GENERAL.—The Chairperson shall establish, by rule, an assessment schedule, including the assessment base and rates, applicable to covered persons subject to section 1023 to recover the costs of the Corporation in carrying out its responsibilities described under this title. The Chairperson may, by rule or other action, impose additional assessments on insured depository institutions to regulate consumer financial products and services under the enumerated consumer protection statutes specified in this title.

(2) LIMITATION.—The assessments imposed by the Chairperson by rules established pursuant to paragraph (1) shall not exceed the costs reasonably necessary to cover the expenses associated with carrying outs its supervisory and rulemaking responsibilities under this title.

(b) FUND ESTABLISHED.—

(1) IN GENERAL.—There is established in the Treasury of the United States, a separate account, to be known as the Consumer Financial Protection Fund (referred to in this title as the ''CFP Fund''). Fees and assessments collected under subsection (a) shall be deposited into the CFP Fund.

(2) RULE OF CONSTRUCTION.—Any amounts deposited into the CFP Fund may not be construed to be Government funds or appropriated monies.

(3) NO APPORTIONMENT.—Any amounts deposited into the CFP Fund shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(4) USE OF FUNDS.—Funds in the CFP Fund shall be immediately available to the Corporation and under the control of the Corporation, and shall remain available until expended, to pay the expenses of the Corporation in carrying out its duties and responsibilities pursuant to this title.

(c) CONFORMING AMENDMENTS.—Section 11(a)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(A)) is amended—

(1) in clause (ii), by striking ''and'' at the end;

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following:

''(iii) to carry out additional duties pursuant to the Consumer Financial Protection Act of 2010; and''.

(d) FUNDING.—The Chairperson shall dedicate not less than 10 percent of the annual estimated budget of the Corporation, excluding any funding provided pursuant to section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)), to carry out the requirements specified in this title.

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Director shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a report, beginning with the session following the designated transfer date.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Corporation, as well as other significant initiatives conducted by the Division, during the preceding year and the plan of the Division for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Division, in consultation with the Federal Trade Commission has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Division was a party during the preceding year; and

(6) the actions taken regarding rules, orders, and supervisory actions with respect to nondepository covered persons which are not credit unions or depository institutions.

SEC. 1017. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

Subtitle B—General Powers of the Division

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Division shall seek to implement and, where applicable, enforce the enumerated consumer protection statutes consistently for the purpose of ensuring that markets for consumer financial products and services are fair, transparent, and competitive.

(b) OBJECTIVES.—The Division is authorized to exercise its authorities under the enumerated consumer protection statutes for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair or deceptive acts and practices;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; and

(4) enumerated consumer protection statutes are enforced consistently, without regard to the status of a person as a depository institution, in order to ensure uniform consumer protection in the marketplace.

(c) FUNCTIONS.—The primary functions of the Division are—

(1) issuing rules, orders and guidance implementing the enumerated consumer protection statutes;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers, and the proper functioning of such markets;

(4) subject to section 1023, supervising nondepository covered persons for compliance with the enumerated consumer protection statutes, and taking appropriate enforcement action to address violations of the enumerated consumer protection statutes;

(5) conducting financial education programs; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Division.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Division is authorized to exercise its authorities under the enumerated consumer protection statutes to implement the provisions of the enumerated consumer protection statutes.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The Division may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Division to administer and carry out the enumerated consumer protection statutes, and to prevent evasions thereof.

(2) EXCLUSIVE RULEMAKING AUTHORITY.—Notwithstanding any other provisions of Federal law, to the extent that a provision of the enumerated consumer protection statutes authorizes the Division and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with the enumerated consumer protection statutes, the Division shall have the exclusive authority to prescribe rules pursuant to those provisions of law, with respect to compliance with those provisions of law by covered persons.

(3) CORPORATION APPROVAL REQUIRED.—No rule or regulation of the Division may become effective with respect to any person,

unless approved by majority vote of the members of the Board of Directors of the Corporation.

(c) PRESERVATION OF STATE REGULATION OF INSURANCE.—Nothing in this title shall abrogate or limit in any way section 2 of the Act of March 9, 1945 (15 U.S.C. 1012) or otherwise grant the Division authority over the business of insurance.

(d) LIMITATION ON AUTHORITY OF DIVISION.—The Division shall have no authority to issue rules, regulations, orders, or guidance that affect any underwriting standards of depository institutions or affiliates thereof.

SEC. 1023. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) APPLICABILITY.—

(1) COVERED PERSONS.—

(A) APPLICABILITY.—

(i) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to any person that is—

(I) a type or category of mortgage loan originator that the Division, in consultation with the Federal Trade Commission, determines by rule is subject to the requirements of this section; or

(II) a nondepository covered person that demonstrates a pattern or practice of violations of the enumerated consumer protection statutes, that the Division, in consultation with the Federal Trade Commission, determines by order, after notice and opportunity for response, is subject to the requirements of this section.

(ii) RULE OF CONSTRUCTION.—On and after the effective date of this section, the Division may consider violations which occurred during the previous 3 years in making a determination that a nondepository covered person shall be subject to this section.

(B) FACTORS FOR CONSIDERATION.—In determining whether a mortgage loan originator is subject to the requirements of this section, the Division shall consider the risks to consumers created by the provision of such consumer financial products or services and the probability that supervision can serve to diminish such risks. In making these determinations, the Division shall consider—

(i) the total financial assets of the mortgage loan originator;

(ii) the volume of transactions involving consumer financial products or service in which the mortgage loan originator engages;

(iii) the complexity and nature of the financial products or services offered by the mortgage loan originator; and

(iv) the number and nature of any violations of the enumerated consumer protections statutes by the mortgage loan originator.

(C) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prohibit the Division from exempting any class of mortgage loan originator or any specific mortgage loan originator from the requirements of this section.

(2) CERTAIN PERSONS EXCLUDED.—This section shall not apply to persons described in section 1024.

(b) SUPERVISION.—

(1) IN GENERAL.—The Division shall require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of the enumerated consumer protection statutes;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) RISK-BASED SUPERVISION PROGRAM.—The Division shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a), is based on the assessment by the Division of the risks posed to consumers, and taking into consideration, as applicable—

(A) the volume of transactions involving consumer financial products or services in which the persons described in subsection (a) engage;

(B) the number and nature of any violations of the enumerated consumer protection statutes on the part of the persons described in subsection (a); and

(C) the extent to which such institutions are subject to oversight by State authorities for consumer protection.

(3) COORDINATION.—To minimize regulatory burden, the Division shall coordinate its supervisory activities with the supervisory activities conducted by Federal regulators and the State regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(4) USE OF EXISTING REPORTS.—The Division shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a) that have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—The authority of the Chairperson to require reports from persons described in subsection (a), as permitted under paragraph (1), regarding information under the control of such person, including the authority to require reports when such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Division shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) REGISTRATION, RECORDKEEPING AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

(A) IN GENERAL.—The Division shall prescribe rules to facilitate supervision of persons described in subsection (a) and assessment and detection of risks to consumers.

(B) REGISTRATION.—

(i) IN GENERAL.—The Division shall prescribe rules regarding registration requirements for persons described in subsection (a).

(ii) EXCEPTION FOR RELATED PERSONS.—The Division may not impose requirements under this section regarding the registration of a related person.

(iii) REGISTRATION INFORMATION.—Subject to rules prescribed by the Division, the Division shall publicly disclose the registration information about persons described in subsection (a) to facilitate the ability of consumers to identify persons described in subsection (a) registered with the Division.

(C) RECORDKEEPING.—The Division may require a person described in subsection (a), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(D) REQUIREMENTS CONCERNING OBLIGATIONS.—The Division may prescribe rules regarding a person described in subsection (a), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers.

(E) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Division shall consult with State regulatory authorities regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE DIVISION TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that a Federal law authorizes the Division and another Federal agency, other than the Federal Trade Commission, to enforce an enumerated consumer protection statute, the Division shall have exclusive authority to enforce that enumerated consumer protection statute with respect to any person described in subsection (a)(1)(A).

(2) REFERRAL.—Any Federal agency authorized to enforce an enumerated consumer protection statute may recommend in writing to the Division that the Division initiate an enforcement proceeding, as the Division is authorized by that statute or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Division and the Federal Trade Commission shall coordinate enforcement actions for violations of Federal law regarding the offering or provision of consumer financial products or services by any person described in subsection (a)(1)(A), or service providers thereto. In carrying out this subparagraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce a Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Division or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Division or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(4) SAVINGS PROVISION.—Except as specifically stated in this title regarding the enumerated consumer protection statutes, nothing in this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act, or any other provision of law.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—To the extent that Federal law authorizes the Division and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a) under that provision of law for purposes of assuring compliance with the enumerated consumer protection statutes and any regulations thereunder, the Division shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a), subject to those provisions of law.

(e) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Division under this section, to the same extent as if

such service provider were engaged in a service relationship with a bank, and the Division were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). For purposes of this subsection, a service provider shall not include persons described in section 1024.

(f) ENFORCEMENT AUTHORITY.—The Division may enforce the requirements of this title with respect to persons described in subsection (a) pursuant to section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), as if such person were an insured depository institution.

SEC. 1024. SUPERVISION AND ENFORCEMENT ON CONSUMER PROTECTION.

The Division shall have no authority to require reports from, conduct examinations of, or take enforcement action against an insured depository institution or any affiliate thereof. The authorities of the Division and the Director under this title do not alter or affect the authority of the prudential regulators to require reports from, conduct examinations of, or take enforcement action against an insured depository institution or any affiliate thereof for purposes of assessing and enforcing compliance by such person with the requirements of the enumerated consumer protection statutes and obtaining information about the activities subject to such law and the associated compliance systems or procedures of such institution or affiliate.

SEC. 1025. DISCLOSURES.

(a) IN GENERAL.—To the extent that the enumerated consumer protection statutes require disclosures to consumers, the Division shall prescribe rules to ensure that such disclosures make timely, appropriate, and effective disclosures to consumers of the costs, benefits, and risks associated with the product or service.

(b) MODEL DISCLOSURES.—

(1) IN GENERAL.—Any final rule prescribed by the Division under this section requiring disclosures may include a model form that may be used.

(2) FORMAT.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) CONSUMER TESTING.—Any model form issued by the Division shall be validated through consumer testing.

(c) BASIS FOR RULEMAKING.—In prescribing disclosure rules, the Division shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) SAFE HARBOR.—Any person that uses a model form issued by the Division shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) TRIAL DISCLOSURE PROGRAMS.—

(1) IN GENERAL.—The Division may permit a person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued by the Division.

(2) SAFE HARBOR.—The standards and procedures issued by the Division shall be designed to encourage persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Division may establish a limited period during which a person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer protection statute.

(3) PUBLIC DISCLOSURE.—The rules of the Division shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage nondepository covered persons to conduct effective trials.

Subtitle C—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1041. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

(a) DEFINED TERMS.—For purposes of this subtitle—

(1) the term ''consumer financial protection functions'' means—

(A) the functions and authorities of the Board of Governors under the enumerated consumer protection statutes, except those functions retained by the prudential regulators under section 1024; and

(B) the functions and authorities of the Federal Trade Commission under the enumerated consumer laws with respect to persons subject to the jurisdiction of the Division under section 1023, except that the Federal Trade Commission shall retain concurrent enforcement jurisdiction under the enumerated consumer protection statutes over such persons, consistent with subsection 1023(c); and

(2) the terms ''transferor agency'' and ''transferor agencies'' mean, respectively the Board of Governors and the Federal Trade Commission.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Division.

(B) BOARD OF GOVERNORS AUTHORITY.—The Division shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Trade Commission are transferred to the Division. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission to the Division.

(B) COMMISSION AUTHORITY.—The Division shall have all powers and duties that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

(c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAMINATION AND ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (b) do not affect the authority of the prudential regulators from conducting examinations or initiating and maintaining enforcement proceedings in accordance with section 1023.

(d) EFFECTIVE DATE.—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1042. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Division under section 1041; and

(2) publish notice of that designated date in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 18 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 18 months after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 24 months after the date of enactment of this Act.

SEC. 1043. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1041(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Division by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this title shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Division by this title, except that the Division, subject to section 1023, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL TRADE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1041(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection

function of the Federal Trade Commission transferred to the Division by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this title shall abate any proceeding commenced by or against the Federal Trade Commission before the designated transfer date with respect to any consumer financial protection function of the Federal Trade Commission transferred to the Division by this title, except that the Division, subject to section 1023, shall be substituted for the Federal Trade Commission as a party to any such proceeding as of the designated transfer date.

(c) CONTINUATION OF EXISTING ORDERS, RULES, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and rules that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and rules, and shall not be enforceable by or against the Division.

(d) IDENTIFICATION OF RULES CONTINUED.—Not later than the designated transfer date, the Division—

(1) shall, after consultation with the head of each transferor agency, identify the rules continued under subsection (g) that will be enforced by the Division; and

(2) shall publish a list of such rules in the Federal Register.

(e) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Division.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Division according to its terms.

SEC. 1044. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Division and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Division by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Division, in a manner that the Division and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Division for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of a position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM BOARD, FTC.—Each employee transferred under this title from the Board of Governors or the Federal Trade Commission shall be placed in a position at the Division with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE BANKS.—

(A) COMPARABILITY.—Each employee transferred under this title from a Federal reserve bank shall be placed in a position with the same status and tenure as that of an employee transferring to the Division from the Board of Governors who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Division are not subject to any additional certification requirements before being placed in a comparable examiner position at the Division examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area, as defined by the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Division—

(A) to separate an employee for cause or for unacceptable performance;

(B) to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) to reassign a supervisory employee outside his or her locality pay area, as defined by the Office of Personnel Management, when the Division determines that the reassignment is necessary for the efficient operation of the Division.

(g) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received during the pay period immediately preceding the date of transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Division to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Division.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Division to increase the pay of a transferred employee.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Division determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Division is required—

(i) that reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Division shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Division as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Division determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Division is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Division shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in his or her existing retirement plan, through any period of continuous employment with the Division.

(ii) EMPLOYER CONTRIBUTION.—The Division shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before his or her transfer to the Division may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) DIVISION PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—Notwithstanding any other provision of law, and subject to the terms and conditions of this section, a separate account in the Federal Reserve System retirement plan shall be established for Division employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Division shall deposit into the account established under clause (i) the employer contributions that the Division makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Division shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term ''existing retirement plan'' means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, which the employee was enrolled in on the day before the designated transfer date; and

(ii) the term ''Federal employee retirement program'' means the retirement program for Federal employees established by chapter 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The Division shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Division decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Division takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; or

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Division decides not to continue participation in any long term care insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Division takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Division shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Division and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Division, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Division shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Division and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Division shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Division—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency, including the Board of Governors, the Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Division shall

coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

Subtitle D—Amendment to the Federal Deposit Insurance Act

SEC. 1051. CORPORATION BOARD MEMBERSHIP.

Section 2(a)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)(B)) is amended to read as follows:

''(B) the Head of Supervision for the Board of Governors of the Federal Reserve System; and''.

SA 3827. Mr. SHELBY (for himself and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 111, line 7, insert ''(a) IN GENERAL.—'' before ''In''.

On page 114, line 14, after ''(iii)'' insert ''that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))''.

On page 114, line 21, after ''(12 U.S.C. 2001 et seq.)'' insert '', a governmental entity, or a regulated entity, as defined under section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20))''.

On page 115, strike lines 18 through 20, and insert the following:

(15) COURT.—The term ''Court'' means the United States District Court for the District of Columbia.

On page 115, between lines 22 and 23, insert the following:

(b) DEFINITIONAL CRITERIA.—For purpose of the definition of the term ''financial company'' under subsection (a)(10), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

On page 115, line 23, strike ''**ORDERLY LIQUIDATION AUTHORITY PANEL**'' and insert ''**JUDICIAL REVIEW**''.

On page 115, strike line 24 and all that follows through page 116, line 16.

On page 116, line 17, strike ''(b)'' and insert ''(a)''.

On page 116, strike lines 18 through 20, and insert the following:

(1) PETITION TO DISTRICT COURT.—

(A) DISTRICT COURT REVIEW.—

On page 116, strike line 21 and all that follows through page 117, line 4, and insert the following:

(i) PETITION TO DISTRICT COURT.—Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as a receiver, the Secretary shall appoint the Corporation as a receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as a receiver.

On page 117, line 9, strike ''Panel'' and insert ''Court''.

On page 117, line 13, strike ''Panel'' and insert ''Court''.

On page 117, beginning on line 16, strike '', within 24 hours of receipt of the petition filed by the Secretary,''.

On page 117, line 21, strike ''is supported'' and all that follows through line 22, and insert ''and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious.''.

On page 117, line 24, strike ''Panel'' and insert ''Court''.

On page 118, line 2, insert ''and satisfies the definition of a financial company under section 201(10)'' after ''danger of default''.

On page 118, lines 3 and 4, strike ''is supported by substantial evidence'' and insert ''is not arbitrary and capricious''.

On page 118, line 4, strike ''Panel'' and insert ''Court''.

On page 118, lines 9 and 10, strike ''is not supported by substantial evidence'' and insert ''is arbitrary and capricious''.

On page 118, line 10, strike ''Panel'' and insert ''Court''.

On page 118, between lines 16 and 17, insert the following:

(v) PETITION GRANTED BY OPERATION OF LAW.—If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this title shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this title.

On page 118, line 18, strike ''Panel'' and insert ''Court''.

On page 118, line 23, strike ''Panel'' and insert ''Court''.

On page 119, line 1, strike ''Panel'' and insert ''Court''.

On page 119, line 12, strike ''PANEL'' and insert ''DISTRICT COURT''.

On page 119, line 16, strike ''Third Circuit'' and insert ''District of Columbia Circuit''.

On page 119, line 17, strike ''Panel'' and insert ''Court''.

On page 119, line 23, strike ''Panel'' and insert ''Court''.

On page 120, strike lines 16 through 17 and insert ''default and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious.''.

On page 121, lines 19 and 20, strike ''is supported by substantial evidence'' and insert ''and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious''.

On page 121, line 21, strike ''(c)'' and insert ''(b)''.

On page 121, line 24, strike ''Panel'' and insert ''Court''.

On page 122, line 5, strike ''subsection (b)(1)'' and all that follows through line 9, and insert ''subsection (a)(1).''.

On page 122, strike lines 14 through 16.

On page 122, line 17, strike ''(C)'' and insert ''(A)''.

On page 122, line 19, strike ''(D)'' and insert ''(B)''.

On page 122, line 21, strike ''(E)'' and insert ''(C)''.

On page 122, line 23, strike ''(F)'' and insert ''(D)''.

On page 123, line 1, strike ''(d)'' and insert ''(c)''.

On page 123, between lines 14 and 15, insert the following:

(d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

(1) BASELINE PERIOD.—Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

(A) to—

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

(3) SECOND EXTENSION OF TIME LIMIT.—

(A) IN GENERAL.—The time limit under this subsection, as extended under paragraph (2), may be extended for up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

(B) ADDITIONAL REPORT REQUIRED.—Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) ONGOING LITIGATION.—The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

(i) the ongoing litigation justifying the need for an extension; and

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) REGULATIONS.—The Corporation may issue regulations governing the termination of receiverships under this title.

(6) NO LIABILITY.—The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

On page 123, line 21, strike ''Panel'' and insert ''Court''.

On page 124, line 11, strike ''Panel'' and insert ''Court''.

On page 126, between lines 9 and 10, insert the following:

(g) STUDY OF PROMPT CORRECTIVE ACTION IMPLEMENTATION BY THE APPROPRIATE FEDERAL AGENCIES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

(B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

(3) REPORT TO COUNCIL.—Not later than 1 years after the date of enactment of this Act, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

(4) COUNCIL REPORT OF ACTION.—Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 120.

On page 128, line 9, strike ''and''.

On page 128, line 12, strike the period at the end and insert ''; and''.

On page 128, between lines 12 and 13, insert the following:

(G) an evaluation of whether the company satisfies the definition of a financial company under section 201.

On page 128, line 16, strike ''202(b)(1)(A)'' and insert ''202(a)(1)(A)''.

On page 129, line 17, strike ''and''.

On page 129, line 21, strike the period at the end and insert ''; and''.

On page 129, between lines 21 and 22, insert the following:

(7) the company satisfies the definition of a financial company under section 201.

On page 132, strike lines 3 through 17, and insert the following:

(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

(ii) describing the plan of, and actions taken by, the Corporation to wind down the covered financial company;

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366 of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

(iv) describing the reasons for the provision of any funding to the receivership out of the Fund;

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

On page 132, between lines 22 and 23, insert the following:

(C) CONGRESSIONAL TESTIMONY.—The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

On page 135, line 15, strike ''section 202(b)'' and insert ''section 202(a)''.

On page 136, line 9, strike ''with the strong presumption'' and insert ''so''.

On page 138, line 16, insert after the period the following: ''All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

''(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

''(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

''(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

''(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

''(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

''(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.''.

On page 138, line 15, strike ''section 210(n)(13)'' and insert ''section 210(n)(11)''.

On page 147, line 3, insert before the period the following: '', and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act''.

On page 187, line 18, strike ''(B), and (C)'' and insert ''(B), (C), and (D)''.

On page 187, line 20, strike ''(D)'' and insert ''(E)''.

On page 192, insert before line 1 the following:

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of $11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by $11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

On page 192, line 1, strike ''(C)'' and insert ''(E)''.

On page 192, beginning on line 3, strike ''(D) or (E)'' and insert ''(F), (G), or (H)''.

On page 192, line 5, strike ''(D)'' and insert ''(F)''.

On page 192, between lines 7 and 8, insert the following:

(G) Any wages, salaries, or commissions including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

On page 192, line 7, strike ''subparagraph (E)).'' and insert ''subparagraph (G) or (H)).''.

On page 192, line 8, strike ''(E)'' and insert ''(H)''.

On page 193, line 18, strike ''(ii)'' and insert the following:

''(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

''(iii)''.

On page 228, line 17, strike ''5th'' and insert ''3rd''.

On page 236, line 20, strike ''5th'' and insert ''3rd''.

On page 237, line 14, strike ''5th'' and insert ''3rd''.

On page 240, line 8, strike ''section 202(c)(1)'' and insert ''section 202(a)(1)''.

On page 246, strike line 21 and all the follows through page 247, line 5, and insert the following:

(B) LIMITATIONS.—

(i) PROHIBITION.—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

On page 254, line 24, strike ''(13)'' and insert ''(11)''.

On page 260, line 4, strike ''subsection (o)(1)(E)(ii))'' and insert ''subsection (o)(1)(D)(ii))''.

On page 263, line 16, strike ''(13)'' and insert ''(11)''.

On page 278, line 5, strike ''(9)'' and insert ''(6)''.

On page 278, line 10, strike ''(9)'' and insert ''(6)''.

On page 278, strike line 18 and all that follows through page 279, line 20.

On page 279, line 21, strike ''(8)'' and insert ''(4)''.

On page 280, line 5, strike ''(9)'' and insert ''(5)''.

On page 281, line 6, strike the period and insert the following: '', plus an interest rate surcharge to be determined by the Secretary,

which shall be greater than the difference between—

''(i) the current average rate on an index of corporate obligations of comparable maturity; and

''(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.''.

On page 281, strike line 20 and all that follows through page 282, line 8, and insert the following:

(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

On page 282, line 9, strike ''(11)'' and insert ''(7)''.

On page 282, strike lines 14 through 19.

On page 282, line 20, strike ''(13)'' and insert ''(8)''.

On page 283, strike lines 5 through 14 and insert the following:

(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

On page 283, line 24, strike ''(14)'' and insert ''(9)''.

On page 284, line 6, insert '', including taking any actions specified'' before ''under 204(d)''.

On page 284, line 7, insert before the period '', and payments to third parties''.

On page 284, between lines 10 and 11, insert the following:

(10) IMPLEMENTATION EXPENSES.—

(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.—As used in this paragraph, the term ''implementation expenses''—

(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

On page 284, strike line 13 and all that follows through page 285, line 2.

On page 285, line 3, strike ''(B)'' and insert ''(A)''.

On page 285, line 10, strike ''(C)'' and insert ''(B)''.

On page 285, line 10, strike ''ADDITIONAL''.

On page 285, line 13, strike ''(E)'' and insert ''(D)''.

On page 285, strike lines 14 through 23.

On page 285, line 24, strike ''(iii)''.

On page 285, line 21, strike ''during the initial capitalization period''.

On page 286, strike line 11 and all that follows through page 287, line 2, and insert the following:

(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (C), the Corporation shall—

(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (C), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

(II) financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies.

(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (E)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

On page 287, strike lines 3 through 10.

On page 289, strike line 25, and insert ''the Corporation, in consultation with the Secretary, deems appropriate.''.

On page 290, beginning on line 9, strike '', in consultation with the Secretary and the Council,''.

On page 290, line 11, insert after the period the following: ''The Corporation shall consult with the Secretary in the development and finalization of such regulations.''.

On page 295, between lines 19 and 20, insert the following:

(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term ''compensation'' to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

On page 296, between lines 15 and 16, insert the following:

(d) FDIC INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) FUNDING.—

(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

(e) TREASURY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing—

(A) a description of actions taken by the Secretary under this title;

(B) an analysis of the approval by the Secretary of the policies and procedures of the

Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

(f) PRIMARY FINANCIAL REGULATORY AGENCY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) REPORTS AND TESTIMONY.—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

(a) NO OTHER FUNDING.—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

(b) LIMIT ON GOVERNMENTAL ACTIONS.—No governmental entity may take any action to circumvent the purposes of this title.

(c) CONFLICT OF INTEREST.—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

SEC. 213. BAN ON SENIOR EXECUTIVES AND DIRECTORS.

(a) PROHIBITION AUTHORITY.—The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) AUTHORITY TO ISSUE ORDER.—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any clause of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) AUTHORIZED ACTIONS.—

(1) IN GENERAL.—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) PROCEDURES.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

(d) REGULATIONS.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

On page 1522, line 11, strike ''The third'' and insert the following:

''(a) FEDERAL RESERVE ACT.—The third''.

On page 1528, line 3, strike the end quotation marks and the final period and insert the following:

''(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 203 of the Restoring American Financial Stability Act of 2010, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under sections 210(n) and 210(o) of the Restoring American Financial Stability Act of 2010.''.

(b) CONFORMING AMENDMENT.—Section 507(a)(2) of title 11, United States Code, is amended by inserting ''claims of any Federal reserve bank related to loans made through programs or facilities authorized under the third undesignated paragraph of the Federal Reserve Act (12 U.S.C. 343),'' after ''this title,''.

On page 1523, line 17, strike ''of sufficient quality'' and insert ''sufficient''.

On page 1523, line 18, insert after the period the following: ''The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph.''.

On page 1523, line 19, strike ''(ii)'' and insert the following:

''(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding.

''(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

''(iv)''.

On page 1523, line 18: insert ''and that any such program is terminated in a timely and orderly fashion'' before ''losses''.

On page 1524, line 11, strike ''assistance,'' and all that follows through line 12 and insert ''assistance.''.

On page 1525, strike line 21 and all that follows through page 1528, line 3, and insert the following:

''(D) The information submitted to Congress under subparagraph (C) related to—

''(i) the identity of the participants in an emergency lending program or facility commenced under this paragraph;

''(ii) the amounts borrowed by each participant in any such program or facility;

''(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons and Ranking Members of the Committees described in subparagraph (C).''.

On page 1537, line 23, insert before the period the following: ''and a request for approval of such plan''.

On page 1537, line 23, strike ''Upon'' and all that follows through page 1538, line 6, and insert the following: ''The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.''.

On page 1538, line 16, strike ''Upon'' and all that follows through page 1547, line 6 and insert the following: ''The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

''(d) RESOLUTION OF APPROVAL.—

''(1) ADDITIONAL DEBT GUARANTEE AUTHORITY.—A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

''(2) FAST TRACK CONSIDERATION IN SENATE.—

''(A) RECONVENING.—Upon receipt of a request under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

''(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

''(C) FLOOR CONSIDERATION.—

''(i) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a request under subsection (c), and ending on the 7th day after that date (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

''(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

''(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

''(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

''(3) RULES.—

''(A) COORDINATION WITH ACTION BY HOUSE OF REPRESENTATIVES.—If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

''(i) The joint resolution of the House of Representatives shall not be referred to a committee.

''(ii) With respect to a joint resolution of the Senate—

''(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

''(II) the vote on passage shall be on the joint resolution of the House of Representatives.

''(B) TREATMENT OF JOINT RESOLUTION OF HOUSE OF REPRESENTATIVES.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House of Representatives shall be entitled to expedited floor procedures under this subsection.

''(C) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

''(D) RULES OF THE SENATE.—This subsection is enacted by Congress—

''(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a joint resolution, and it supersedes other rules, only to the extent that it is inconsistent with such rules; and

''(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

''(4) DEFINITION.—As used in this subsection, the term 'joint resolution' means only a joint resolution—

''(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

''(B) that does not have a preamble;

''(C) the title of which is as follows: 'Joint resolution relating to the approval of a plan to guarantee obligations under section 1155 of the Restoring American Financial Stability Act of 2010'; and

''(D) the matter after the resolving clause of which is as follows: 'That Congress approves the obligation of any amount described in section 1155(c) of the Restoring American Financial Stability Act of 2010.'.''.

On page 1550, strike lines 1 through 12, and insert the following:

(3) LIQUIDITY EVENT.—The term ''liquidity event'' means—

(A) an exceptional and broad reduction in the general ability of financial market participants—

(i) to sell financial assets without an unusual and significant discount; or

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.

On page 1550, strike line 24 and all that follows through page 1551, line 3, and insert the following:

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting ''for which the Corporation has been appointed receiver'' before ''would have serious''; and

(B) in the undesignated matter following subclause (II), by inserting ''for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver'' after ''provide assistance under this section''; and

(2) in clause (v)(I), by striking ''The'' and inserting ''Not later than 3 days after making a determination under clause (i), the''.

SA 3828. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1270, after line 21, insert the following:

(f) SCOPE OF AUTHORITY.—No regulation promulgated under the rulemaking authority of the Bureau under this title shall be enforceable with respect to an entity that has not violated a consumer protection statute and is—

(1) an insured depository institution with assets of not more than $5,000,000,000;

(2) an insured credit union with assets of not more than $5,000,000,000; or

(3) a nonfinancial institution,

until such time as the Bureau certifies that the regulation will not result in an unfunded mandate, increase costs for consumers, or reduce the availability of credit and credit products.

SA 3829. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1270, after line 21, insert the following:

(f) EXEMPTIONS.—Each insured depository institution or insured credit union with assets of not more than $5,000,000,000, and that has not violated the consumer protection statutes is exempt from the regulations of the Bureau. Supervision and enforcement for such institutions shall remain with the primary prudential regulator for such institutions.

SA 3830. Mr. VITTER submitted an amendment intended to be proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

SEC. 212. PROHIBITION ON ALL BAILOUTS.

(a) PROHIBITION.— The United States Government shall not use any funds to bail out creditors or shareholders of any company by paying to any creditor or shareholder, under this or any title, any funds for the purpose of covering the losses of such creditor or shareholder on its investments in such company or ensuring that the amount that such claimant receives on a claim is more than such claimant is entitled to receive on such claim under the Bankruptcy Code. The United States Government shall not coordinate with or participate in any effort involving any foreign or multi-national entity to use foreign or multi-national resources to circumvent the purposes of this title.

(b) REESTABLISHING THE FEDERAL RESERVE LENDER OF LAST RESORT FUNCTION.—

(1) RULEMAKING REQUIRED.—Notwithstanding any provision of this Act or any other provision of law, the Board of Governors, in consultation with the Secretary, shall, not later than 12 months after the date of enactment of this Act, issue rules that shall govern the creation of any emergency stabilization actions by the Board of Governors.

(2) REQUIREMENTS.—At a minimum, rules required under this subsection shall—

(A) prescribe under what circumstances the program may and may not be used in the future;

(B) prescribe how the program shall ensure that it will only be used by solvent companies and will not be used to prevent failure of otherwise failing firms;

(C) determine what type of collateral the Board of Governors will accept against emergency lending to ensure that all lending is done against good collateral;

(D) prescribe how much that collateral will be discounted in order to ensure against taxpayer losses;

(E) address how the Board of Governors and the Secretary shall ensure that the program does not allocate credit or artificially prop up certain segments of the economy;

(F) address how the Board of Governors will transfer any assets associated with losses to the lending program to the Secretary to ensure that losses from emergency lending do not lead to inflationary pressures;

(G) establish procedures by which the Board of Governors would modify and change such rules to ensure a proper notice and comment period, including publicly documenting the need for the rule change; and

(H) include any other factors that the Board of Governors and the Secretary deem appropriate.

(c) LIQUIDATION REQUIRED.—All financial companies put into receivership under this title shall be liquidated within 2 years of being put into receivership. No taxpayer funds may be used

(1) to provide assistance to—

(A) a company that is in bankruptcy, in receivership under title II, or in any other insolvency proceeding; or

(B) any company that would otherwise need to be placed into receivership under Federal or State laws; or

(2) to prevent the liquidation of any financial company under this title.

(d) RECOVERY OF FUNDS.—All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company.

(e) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

(f) NO FDIC BAILOUTS—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823 (c)(4)G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting ''for which the Corporation has been appointed receiver'' before ''would have serious''; and

(B) in the undesignated matter following subclause (II), by inserting ''for the winding up of the insured depository institution for which the Corporation has been appointed receiver'' after ''provide assistance under this section''

SA 3831. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title X and insert the following:

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the ''Consumer Financial Protection Act of 2010''.

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) AFFILIATE.—The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) BUREAU.—The term ''Bureau'' means the Bureau of Consumer Financial Protection.

(3) BUSINESS OF INSURANCE.—The term ''business of insurance'' means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) CONSUMER.—The term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term ''consumer financial product or service'' means any financial product or service that is described in one or more categories under—

(A) paragraph (13) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (13)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) COVERED PERSON.—The term ''covered person'' means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) CREDIT.—The term ''credit'' means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) DEPOSIT-TAKING ACTIVITY.—The term ''deposit-taking activity'' means—

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) DESIGNATED TRANSFER DATE.—The term ''designated transfer date'' means the date established under section 1062.

(10) DIRECTOR.—The term ''Director'' means the Director of the Bureau.

(11) ENUMERATED CONSUMER LAWS.—The term ''enumerated consumer laws'' means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.);

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (c) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.).

(12) FEDERAL CONSUMER FINANCIAL LAW.—The term ''Federal consumer financial law'' means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H.

(13) FINANCIAL PRODUCT OR SERVICE.—The term ''financial product or service''—

(A) means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling,

brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) unknowingly or incidentally processes, stores, or transmits over the Internet, telephone line, mobile network, or any other mode of transmission, as part of a stream of other types of data, financial data in a manner that such data is undifferentiated from other types of data of the same form that the person processes, stores, or transmits;

(II) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(III) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person; or

(bb) provides the information described in item (aa) to an affiliate of such person; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in section 1027(a)(2)(A);

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers; and

(B) does not include the business of insurance.

(14) FOREIGN EXCHANGE.—The term ''foreign exchange'' means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(15) INSURED CREDIT UNION.—The term ''insured credit union'' has the same meaning as in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(16) PAYMENT INSTRUMENT.—The term ''payment instrument'' means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(17) PERSON.—The term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(18) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term ''person regulated by the Commodity Futures Trading Commission'' means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(19) PERSON REGULATED BY THE COMMISSION.—The term ''person regulated by the Commission'' means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(20) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term ''person regulated by a State insurance regulator'' means any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(21) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term ''person that performs income tax preparation activities for consumers'' means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(22) PRUDENTIAL REGULATOR.—The term ''prudential regulator'' means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(23) RELATED PERSON.—The term ''related person''—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for,

or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(24) SERVICE PROVIDER.—

(A) IN GENERAL.—The term ''service provider'' means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) EXCEPTIONS.—The term ''service provider'' does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) RULE OF CONSTRUCTION.—A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(25) STATE.—The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

(26) STORED VALUE.—The term ''stored value'' means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(27) TRANSMITTING OR EXCHANGING FUNDS.—The term ''transmitting or exchanging funds'' means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Subtitle A—Bureau of Consumer Financial Protection

SEC. 1011. ESTABLISHMENT OF THE BUREAU.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System the Bureau of Consumer Financial Protection, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

(1) IN GENERAL.—There is established the position of the Director, who shall serve as the head of the Bureau.

(2) APPOINTMENT.—Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) QUALIFICATION.—The President shall nominate the Director from among individuals who are citizens of the United States.

(4) COMPENSATION.—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(5) DEPUTY DIRECTOR.—There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) TERM.—

(1) IN GENERAL.—The Director shall serve for a term of 5 years.

(2) EXPIRATION OF TERM.—An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) REMOVAL FOR CAUSE.—The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) SERVICE RESTRICTION.—No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) OFFICES.—The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) POWERS OF THE BUREAU.—The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) DELEGATION OF AUTHORITY.—The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) AUTONOMY OF THE BUREAU.—

(1) COORDINATION WITH THE BOARD OF GOVERNORS.—Notwithstanding section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) and any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) AUTONOMY.—Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—

(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) RULES AND ORDERS.—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) RECOMMENDATIONS AND TESTIMONY.—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

SEC. 1013. ADMINISTRATION.

(a) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Bureau.

(B) EMPLOYEES OF THE BUREAU.—The Director is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Notwithstanding any other provision of law, all such employees shall be appointed and compensated on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).

(2) COMPENSATION.—The Director shall at all times provide compensation and benefits to each class of employees that, at a minimum, are equivalent to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services; and

(E) consumer behavior with respect to consumer financial products or services.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with other Federal agencies to route complaints to other Federal regulators, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems; and

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources.

(C) REPORTS TO THE CONGRESS.—The Director shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, other Federal agencies, and State agencies, consistent with Federal law applicable to personally identifiable information. The prudential regulators and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, consistent with Federal law applicable to personally identifiable information.

(c) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending and fair housing efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) OFFICE OF FINANCIAL LITERACY.—

(1) ESTABLISHMENT.—The Director shall establish an Office of Financial Literacy, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) OTHER DUTIES.—The Office of Financial Literacy shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Education, through activities including providing opportunities for consumers to access—

(A) financial counseling;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

(i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;

(ii) reduce debt; and

(iii) improve the financial situation of the consumer;

(E) assistance in developing long-term savings strategies; and

(F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(3) COORDINATION.—The Office of Financial Literacy shall coordinate with other units within the Bureau in carrying out its functions, including—

(A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and

(B) working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(A) in subparagraph (B), by striking ''and'' at the end;

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

(C) by inserting after subparagraph (B) the following new subparagraph:

''(C) the Director of the Bureau of Consumer Financial Protection; and''.

(6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: ''The Director of the Bureau of Consumer Financial Protection shall serve as the Vice Chairman.''.

SEC. 1014. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending, and consumer financial products or services and seek representation of the interests of covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1015. COORDINATION.

The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a report, beginning with the session following the designated transfer date.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law; and

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau.

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—

(1) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

(2) FUNDING CAP.—

(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

(i) 10 percent of such expenses in fiscal year 2011;

(ii) 11 percent of such expenses in fiscal year 2012; and

(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.

(B) AMOUNT ADJUSTED FOR INFLATION.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the percent by which the average urban consumer price index for the quarter preceding the date of the payment differs from the average of that index for the same quarter in the prior year.

(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date.

(4) BUDGET AND FINANCIAL MANAGEMENT.—

(A) FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

(B) FINANCIAL STATEMENTS.—The Bureau shall prepare annually a statement of—

(i) assets and liabilities and surplus or deficit;

(ii) income and expenses; and

(iii) sources and application of funds.

(C) FINANCIAL MANAGEMENT SYSTEMS.—The Bureau shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements and applicable Federal accounting standards.

(D) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established in section 3512(c) of title 31, United States Code.

(E) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

(5) AUDIT OF THE BUREAU.—

(A) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of access of the Comptroller General to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

(B) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Bureau at the time submitted to the Congress.

(C) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(b) CONSUMER FINANCIAL PROTECTION FUND.—

(1) SEPARATE FUND IN FEDERAL RESERVE BOARD ESTABLISHED.—There is established in the Federal Reserve Board a separate fund, to be known as the ''Consumer Financial Protection Fund'' (referred to in this section as the ''Bureau Fund'').

(2) FUND RECEIPTS.—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

(3) INVESTMENT AUTHORITY.—

(A) AMOUNTS IN BUREAU FUND MAY BE INVESTED.—The Bureau may request the Board of Governors to invest the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

(B) ELIGIBLE INVESTMENTS.—Investments authorized by this paragraph shall be made by the Board of Governors in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Bureau Fund, as determined by the Bureau.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Bureau Fund shall be credited to the Bureau Fund.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The compensation of the Director and other employees of the Bureau and all other expenses thereof may be paid from, obtained by, transferred to, or credited to the Bureau Fund under this section.

(2) FUNDS THAT ARE NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Bureau Fund and in the Civil Penalty Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

(d) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Federal Reserve Board a fund to be known as the ''Consumer Financial Protection Civil Penalty Fund'' (referred to in this subsection as the ''Civil Penalty Fund''). If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

(2) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.

SEC. 1018. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

Subtitle B—General Powers of the Bureau

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that markets for consumer financial products and services are fair, transparent, and competitive.

(b) OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) FUNCTIONS.—The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

(4) subject to sections 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) GENERAL AUTHORITY.—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

(i) the total assets of the class of covered persons;

(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and

(iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—Notwithstanding any other provisions of Federal law, to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) REPORTS.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(4) CONFIDENTIALITY RULES.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(A) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(B) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(5) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

SEC. 1023. REVIEW OF BUREAU REGULATIONS.

(a) REVIEW OF BUREAU REGULATIONS.—On the petition of a member agency of the Council, the Council may set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(b) PETITION.—

(1) PROCEDURE.—An agency represented by a member of the Council may petition the Council, in writing, and in accordance with rules prescribed pursuant to subsection (f), to stay the effectiveness of, or set aside, a regulation if the member agency filing the petition—

(A) has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States; and

(B) files the petition with the Council not later than 10 days after the date on which the regulation has been

(C) published in the Federal Register.

(2) PUBLICATION.—Any petition filed with the Council under this section shall be published in the Federal Register and transmitted contemporaneously with filing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) STAYS AND SET ASIDES.—

(1) STAY.—

(A) IN GENERAL.—Upon the request of any member agency, the Chairperson of the Council may stay the effectiveness of a regulation for the purpose of allowing appropriate consideration of the petition by the Council.

(B) EXPIRATION.—A stay issued under this paragraph shall expire on the earlier of—

(i) 90 days after the date of filing of the petition under subsection (b); or

(ii) the date on which the Council makes a decision under paragraph (3).

(2) NO ADVERSE INFERENCE.—After the expiration of any stay imposed under this section, no inference shall be drawn regarding the validity or enforceability of a regulation which was the subject of the petition.

(3) VOTE.—

(A) IN GENERAL.—The decision to issue a stay of, or set aside, any regulation under this section shall be made only with the affirmative vote in accordance with subparagraph (B) of ⅔ of the members of the Council then serving.

(B) AUTHORIZATION TO VOTE.—A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by the Bureau only if the agency or department represented by that member has—

(i) considered any relevant information provided by the agency submitting the petition and by the Bureau; and

(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(4) DECISIONS TO SET ASIDE.—

(A) EFFECT OF DECISION.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall render such regulation, or provision thereof, unenforceable.

(B) TIMELY ACTION REQUIRED.—The Council may not issue a decision to set aside a regulation, or provision thereof, which is the subject of a petition under this section after the expiration of the later of—

(i) 45 days following the date of filing of the petition, unless a stay is issued under paragraph (1); or

(ii) the expiration of a stay issued by the Council under this section.

(C) SEPARATE AUTHORITY.—The issuance of a stay under this section does not affect the authority of the Council to set aside a regulation.

(5) DISMISSAL DUE TO INACTION.—A petition under this section shall be deemed dismissed if the Council has not issued a decision to set aside a regulation, or provision thereof, within the period for timely action under paragraph (4)(B).

(6) PUBLICATION OF DECISION.—Any decision under this subsection to issue a stay of, or set aside, a regulation or provision thereof shall be published by the Council in the Federal Register as soon as practicable after the decision is made, with an explanation of the reasons for the decision.

(7) RULEMAKING PROCEDURES INAPPLICABLE.—The notice and comment procedures under section 553 of title 5, United States Code, shall not apply to any decision under this section of the Council to issue a stay of, or set aside, a regulation.

(8) JUDICIAL REVIEW OF DECISIONS BY THE COUNCIL.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5, United States Code.

(d) APPLICATION OF OTHER LAW.—Nothing in this section shall be construed as altering, limiting, or restricting the application of any other provision of law, except as otherwise specifically provided in this section, including chapter 5 and chapter 7 of title 5, United States Code, to a regulation which is the subject of a petition filed under this section.

(e) SAVINGS CLAUSE.—Nothing in this section shall be construed as limiting or restricting the Bureau from engaging in a rulemaking in accordance with applicable law.

(f) IMPLEMENTING RULES.—The Council shall prescribe procedural rules to implement this section.

SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) SCOPE OF COVERAGE.—

(1) APPLICABILITY.—Notwithstanding any other provision of this title, and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans; or

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2).

(2) RULEMAKING TO DEFINE COVERED PERSONS SUBJECT TO THIS SECTION.—The Bureau shall consult with the Federal Trade Commission prior to issuing a rule to define covered persons subject to this section, in accordance with paragraph (1)(B). The Bureau shall issue its initial rule within 1 year of the designated transfer date.

(3) RULES OF CONSTRUCTION.—

(A) CERTAIN PERSONS EXCLUDED.—This section shall not apply to persons described in section 1025(a) or 1026(a).

(B) ACTIVITY LEVELS.—For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) RISK-BASED SUPERVISION PROGRAM.—The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from persons described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) REGISTRATION, RECORDKEEPING, AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

(A) IN GENERAL.—The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a) and assessment and detection of risks to consumers.

(B) REGISTRATION.—

(i) IN GENERAL.—The Bureau shall prescribe rules regarding registration requirements for persons described in subsection (a).

(ii) EXCEPTION FOR RELATED PERSONS.—The Bureau may not impose requirements under this section regarding the registration of a related person.

(iii) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau shall publicly disclose the registration information about persons described in subsection (a) to facilitate the ability of consumers to identify persons described in subsection (a) registered with the Bureau.

(C) RECORDKEEPING.—The Bureau may require a person described in subsection (a), to

generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(D) REQUIREMENTS CONCERNING OBLIGATIONS.—The Bureau may prescribe rules regarding a person described in subsection (a), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(E) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) EXCLUSIVE ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE EXCLUSIVE ENFORCEMENT AUTHORITY.—To the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law with respect to any person described in subsection (a)(1)(B).

(2) REFERRAL.—Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall coordinate enforcement actions for violations of Federal law regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1)(A), or service providers thereto. In carrying out this subparagraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce a Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law, to the extent that Federal law authorizes the Bureau and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a) under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a), subject to those provisions of law.

(e) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

(f) PRESERVATION OF FARM CREDIT ADMINISTRATION AUTHORITY.—No provision of this title may be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—

(1) APPLICABILITY.—This section shall apply to any covered person that is—

(A) an insured depository institution with total assets of more than $10,000,000,000 and any affiliate thereof; or

(B) an insured credit union with total assets of more than $10,000,000,000 and any affiliate thereof.

(2) RULE OF CONSTRUCTION.—For purposes of determining total assets under this section and section 1026, the Bureau shall rely on the same regulations and interim methodologies specified in section 312(e).

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial laws;

(B) obtaining information about the activities and compliance systems or procedures of such persons; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(4) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(5) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, as permitted by the subject provision of Federal law.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

(e) SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.—

(1) EXAMINATIONS.—A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person described in subsection (a) that is supervised by the prudential regulator and the Bureau, respectively—

(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person described in subsection (a);

(B) conduct simultaneous examinations of each insured depository institution, insured credit union, or other covered person described in subsection (a), unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) AVOIDANCE OF CONFLICT IN SUPERVISION.—

(A) REQUEST.—If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the ''agencies'') are conflicting, an insured depository institution, insured credit union, or other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

(4) APPEALS TO GOVERNING PANEL.—

(A) IN GENERAL.—If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

(C) CONDUCT OF APPEAL.—In an appeal under this paragraph—

(i) the insured depository institution, insured credit union, or other covered person described in subsection (a)—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered person described in subsection (a) may jointly agree.

(D) PUBLIC AVAILABILITY OF DETERMINATIONS.—A governing panel shall publish all information contained in a determination by the governing panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of title 5, United States Code.

(E) PROHIBITION AGAINST RETALIATION.—The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.

(F) LIMITATION.—The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as applicable.

(G) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law.

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of $10,000,000,000 or less; or

(2) an insured credit union with total assets of $10,000,000,000 or less.

(b) REPORTS.—The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to support its examination activities under subsection (c), and to assess and detect risks to consumers and consumer financial markets.

(1) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(2) PRESERVATION OF AUTHORITY.—Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as permitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) EXAMINATIONS.—

(1) IN GENERAL.—The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator of persons described in subsection (a).

(2) AGENCY COORDINATION.—The prudential regulator shall—

(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

(B) involve such Bureau examiner in the entire examination process for such person; and

(C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Except for requiring reports under subsection (b), the prudential regulator shall have exclusive authority to enforce compliance with respect to a person described in subsection (a).

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) RESPONSE.—Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) SERVICE PROVIDERS.—A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under section 1025 to the same extent as if the Bureau were an appropriate Federal bank agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL GOODS OR SERVICES.—

(1) SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) OFFERING OR PROVISION OF CERTAIN CONSUMER FINANCIAL PRODUCTS OR SERVICES IN CONNECTION WITH THE SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services who—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is—

(I) subject to a finance charge; or

(II) payable by written agreement in more than 4 installments.

(C) LIMITATION.—Notwithstanding subparagraph (B), the Bureau may not exercise any rulemaking, supervisory, enforcement, or

other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(D) RULE OF CONSTRUCTION.—No provision of this title may be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(b) EXCLUSION FOR REAL ESTATE BROKERAGE ACTIVITIES.—

(1) REAL ESTATE BROKERAGE ACTIVITIES EXCLUDED.—Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(c) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Director may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) DESCRIPTION OF ACTIVITIES.—A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

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

(A) MANUFACTURED HOME.—The term ''manufactured home'' has the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term ''modular home'' means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent that such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) NOT A CUSTOMARY AND USUAL ACCOUNTING ACTIVITY.—For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) RULE OF CONSTRUCTION.—For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in clause (i) or (ii) of paragraph (1)(A) directly from such person, and such credit is—

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) OTHER LIMITATIONS.—Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(e) EXCLUSION FOR ATTORNEYS.—

(1) IN GENERAL.—The Bureau may not exercise any authority to conduct examinations of an attorney licensed by a State, to the extent that the attorney is engaged in the practice of law under the laws of such State.

(2) EXCEPTION FOR ENUMERATED CONSUMER LAWS AND TRANSFERRED AUTHORITIES.—Paragraph (1) shall not apply to an attorney who is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(f) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(g) EXCLUSION FOR EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) PRESERVATION OF AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) ACTIVITIES NOT CONSTITUTING THE OFFERING OR PROVISION OF ANY CONSUMER FINANCIAL PRODUCT OR SERVICE.—For purposes of this title, a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is a specified plan or arrangement, or is engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement.

(3) LIMITATION ON BUREAU AUTHORITY.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rulemaking or enforcement authority with respect to products or services that relate to any specified plan or arrangement.

(B) BUREAU ACTION ONLY PURSUANT TO AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement. Subject to a request made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request, in accordance with the provisions of this title. A request made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title with respect to the provision of services relating to any specified plan or arrangement.

(C) DESCRIPTION OF PRODUCTS OR SERVICES.—To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) SPECIFIED PLAN OR ARRANGEMENT.—For purposes of this subsection, the term ''specified plan or arrangement'' means any plan, account, or arrangement described in section

220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974.

(h) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(i) EXCLUSION FOR PERSONS REGULATED BY THE COMMISSION.—

(1) IN GENERAL.—No provision of this title may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.

(j) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(k) EXCLUSION FOR PERSONS REGULATED BY THE FARM CREDIT ADMINISTRATION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Farm Credit Administration.

(2) DEFINITION.—For purposes of this subsection, the term ''person regulated by the Farm Credit Administration'' means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) LIMITATION.—The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) INSURANCE.—The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) LIMITED AUTHORITY OF THE BUREAU.—Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such subsections—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 1022, 1052, or 1053.

(o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) ATTORNEY GENERAL.—No provision of this title, including section 1024(c)(1), shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) SECRETARY OF THE TREASURY.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) DEPOSIT INSURANCE AND SHARE INSURANCE.—Nothing in this title shall affect the authority of the Corporation under the Federal Deposit Insurance Act or the National Credit Union Administration Board under the Federal Credit Union Act as to matters related to deposit insurance and share insurance, respectively.

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) STUDY AND REPORT.—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (a) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau.

SEC. 1029. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle C—Specific Bureau Authorities

SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) RULEMAKING.—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—

(1) IN GENERAL.—The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) CONSIDERATION OF PUBLIC POLICIES.—In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) ABUSIVE.—The Bureau shall have no authority under this section to declare an act

or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) CONSULTATION.—In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

SEC. 1032. DISCLOSURES.

(a) IN GENERAL.—The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(b) MODEL DISCLOSURES.—

(1) IN GENERAL.—Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) FORMAT.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) CONSUMER TESTING.—Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) BASIS FOR RULEMAKING.—In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) SAFE HARBOR.—Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) TRIAL DISCLOSURE PROGRAMS.—

(1) IN GENERAL.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) SAFE HARBOR.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) PUBLIC DISCLOSURE.—The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.

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

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

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

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

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

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

(c) NO DUTY TO MAINTAIN RECORDS.—Nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.

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

(e) CONSULTATION.—The Bureau shall, when prescribing any rule under this section, consult with the Federal banking agencies and the Federal Trade Commission to ensure that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND INQUIRIES.

(a) TIMELY REGULATOR RESPONSE TO CONSUMERS.—The Bureau shall establish, in consultation with the appropriate Federal regulatory agencies, reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person, including—

(1) all steps that have been taken by the regulator in response to the complaint or inquiry of the consumer;

(2) any responses received by the regulator from the covered person; and

(3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.

(b) TIMELY RESPONSE TO REGULATOR BY COVERED PERSON.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry, including—

(1) steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer;

(2) responses received by the covered person from the consumer; and

(3) follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

(c) PROVISION OF INFORMATION TO CONSUMERS.—

(1) IN GENERAL.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall, in a timely manner, comply with a consumer request for information in the control or possession of such covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including supporting written documentation, concerning the account of the consumer.

(2) EXCEPTIONS.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025, a prudential regulator, and any other agency having jurisdiction over a covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 may not be required by this section to make available to the consumer—

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

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

(C) any information required to be kept confidential by any other provision of law; or

(D) any nonpublic or confidential information, including confidential supervisory information.

(d) AGREEMENTS WITH OTHER AGENCIES.—The Bureau shall enter into a memorandum of understanding with any affected Federal regulatory agency to establish procedures by which any covered person, and the prudential regulators, and any other agency having jurisdiction over a covered person, including the Secretary of the Department of Housing and Urban Development and the Secretary of Education, shall comply with this section.

SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman (in this section referred to as the ''Ombudsman'') within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) PUBLIC INFORMATION.—The Secretary and the Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965 (20 U.S.C. 1018(f)), to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) ANNUAL REPORTS.—

(1) IN GENERAL.—The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) SUBMISSION.—The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) DEFINITIONS.—For purposes of this section, the terms ''private education loan'' and ''institution of higher education'' have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

SEC. 1036. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other than sections 1044 through 1048, may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 1083, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) RESERVATION OF AUTHORITY.—No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this subsection, the term ''consumer protection regulation'' means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States in that State or in State court having jurisdiction over the defendant, to enforce provisions of this title or regulations issued thereunder and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued thereunder with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law, and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to a State-chartered entity.

(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person to enforce any provision of this title, including any regulation prescribed by the Director under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Director, a prudential regulator, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Director shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of the enactment of this title, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

''SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

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

''(1) NATIONAL BANK.—The term 'national bank' includes—

''(A) any bank organized under the laws of the United States; and

''(B) any Federal branch established in accordance with the International Banking Act of 1978.

''(2) STATE CONSUMER FINANCIAL LAWS.—The term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

''(3) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(b) PREEMPTION STANDARD.—

''(1) IN GENERAL.—State consumer financial laws are preempted, only if—

''(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

''(B) the preemption of the State consumer financial law is in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al, 517 U.S. 25 (1996), and a preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency, in accordance with applicable law, on a case-by-case basis, and any such determination by a court shall comply with the standards set forth in subsection (d), with the court making the finding under subsection (d), de novo; or

''(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

''(2) SAVINGS CLAUSE.—This title does not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

''(3) CASE-BY-CASE BASIS.—

''(A) DEFINITION.—As used in this section the term 'case-by-case basis' refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

''(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

''(5) STANDARDS OF REVIEW.—

''(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

''(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

''(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

''(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

''(d) OTHER FEDERAL LAWS.—Notwithstanding any other provision of law, the Comptroller of the Currency may not prescribe a regulation or order pursuant to subsection (b)(1)(B) until the Comptroller of the Currency, after consultation with the Director of the Bureau of Consumer Financial Protection, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a national bank, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

''(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

''(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

''(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

''(f) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

''(g) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

''(h) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

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

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

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

''(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than

a subsidiary, affiliate, or agent that is chartered as a national bank).''.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

''(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

''(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

''Sec. 6.. State law preemption standards for Federal savings associations and subsidiaries clarified.''.

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(j) VISITORIAL POWERS.—

''(1) IN GENERAL.—No provision of this title which relates to visitorial powers to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction, as authorized under section 5240(a)—

''(A) to enforce any applicable provision of Federal or State law, as authorized by such law; or

''(B) on behalf of residents of such State, to enforce any applicable provision of any Federal or nonpreempted State law against a national bank, as authorized by such law, or to seek relief for such residents from any violation of any such law by any national bank.

''(2) PRIOR CONSULTATION WITH OCC REQUIRED.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Comptroller of the Currency before acting under paragraph (1).

''(k) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

''(c) VISITORIAL POWERS.—

''(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

''(A) to enforce any applicable provision of Federal or State law, as authorized by such law; or

''(B) on behalf of residents of such State, to enforce any applicable provision of any Federal or nonpreempted State law against a Federal savings association, as authorized by such law, or to seek relief for such residents from any violation of any such law by any Federal savings association.

''(2) PRIOR CONSULTATION WITH OCC REQUIRED.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Comptroller of the Currency before acting under paragraph (1).

''(d) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

SEC. 1048. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 1051. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) BUREAU INVESTIGATION.—The term ''Bureau investigation'' means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation, as defined in this section.

(2) BUREAU INVESTIGATOR.—The term ''Bureau investigator'' means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(3) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms ''civil investigative demand'' and ''demand'' mean any demand issued by the Bureau.

(4) CUSTODIAN.—The term ''custodian'' means the custodian or any deputy custodian designated by the Bureau.

(5) DOCUMENTARY MATERIAL.—The term ''documentary material'' includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(6) VIOLATION.—The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) SUBPOENAS.—

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

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

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

(c) DEMANDS.—

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

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—Any civil investigative demand and any enforcement petition filed under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

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

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

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

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

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

(9) PROOF OF SERVICE.—

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

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

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

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

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

(13) TESTIMONY.—

(A) IN GENERAL.—

(i) OATH OR AFFIRMATION.—Any Bureau investigator before whom oral testimony is to be taken shall put the witness under oath or affirmation, and shall personally, or by any individual acting under the direction of and in the presence of the Bureau investigator, record the testimony of the witness.

(ii) TRANSCRIPTION.—The testimony shall be taken stenographically and transcribed.

(iii) TRANSMISSION TO CUSTODIAN.—After the testimony is fully transcribed, the Bureau investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Bureau investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons, except the person giving the testimony, the attorney of that person, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

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

(D) ATTORNEY REPRESENTATION.—

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

(ii) AUTHORITY.—The attorney may advise a person described in clause (i), in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such person shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

(iv) REFUSAL TO ANSWER.—If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

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

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

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

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Documentary materials and tangible things received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) DISCLOSURE TO CONGRESS.—No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

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

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

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

(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection

(b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Bureau investigator named in the demand, such person may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) at the Bureau, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

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

(h) JURISDICTION OF COURT.—

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

(2) APPEAL.—Any final order entered as described in paragraph (1) shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Bureau is authorized to conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any rules prescribed by the Bureau under this title; and

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

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ORDERS AUTHORIZED.—

(A) IN GENERAL.—If, in the opinion of the Bureau, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to sections 1024, 1025, and 1026, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) CONTENT OF NOTICE.—The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Bureau, at the request of any party so served.

(C) CONSENT.—Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) PROCEDURE.—In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the Bureau may at any time, upon such notice and in such manner as the Bureau shall determine proper, modify, terminate, or set aside any such order. Upon filing of the record as provided, the Bureau may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Bureau be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Bureau, and thereupon the Bureau shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Bureau. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court of the United States, upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Bureau.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Bureau determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Bureau may issue a temporary order requiring the person to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings. Such order may include any requirement authorized under this subtitle. Such order shall become effective upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Bureau shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Not later than 10 days after the covered person or service provider concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the residence or principal office or place of business of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that the books and records of a covered person or service provider are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Bureau may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate

state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Bureau determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Bureau may in its discretion apply to the United States district court within the jurisdiction of which the principal office or place of business of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) RULES.—The Bureau shall prescribe rules establishing such procedures as may be necessary to carry out this section.

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a Federal consumer financial law, the Bureau may, subject to sections 1024, 1025, and 1026, commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Bureau may act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Bureau is a party.

(c) COMPROMISE OF ACTIONS.—The Bureau may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under Federal consumer financial law, or any rule thereunder, the Bureau shall notify the Attorney General and, with respect to a civil action against an insured depository institution or insured credit union, the appropriate prudential regulator.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Bureau may represent itself in its own name before the Supreme Court of the United States, provided that the Bureau makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari, and the Attorney General concurs with such request or fails to take action within 60 days of the request of the Bureau.

(f) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with any Federal consumer financial law.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) IN GENERAL.—For purposes of this subsection, an action arising under this title does not include claims arising solely under enumerated consumer laws.

(B) BUREAU AUTHORITY.—In any action arising solely under an enumerated consumer law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(C) TRANSFERRED AUTHORITY.—In any action arising solely under laws for which authorities were transferred under subtitles F and H, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

SEC. 1055. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.

(2) RELIEF.—Relief under this section may include, without limitation—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages or other monetary relief;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties, as set forth more fully in subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Bureau, a State attorney general, or any State regulator to enforce any Federal consumer financial law, the Bureau, the State attorney general, or the State regulator may recover its costs in connection with prosecuting such action if the Bureau, the State attorney general, or the State regulator is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) PENALTY AMOUNTS.—

(A) FIRST TIER.—For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed $5,000 for each day during which such violation or failure to pay continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty may not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed $1,000,000 for each day during which such violation continues.

(3) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (2), the Bureau or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Bureau may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (2). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(5) NOTICE AND HEARING.—No civil penalty may be assessed under this subsection with respect to a violation of any Federal consumer financial law, unless—

(A) the Bureau gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Bureau.

SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.

If the Bureau obtains evidence that any person, domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Bureau shall have the power to transmit such evidence to the Attorney General of the United States, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the Bureau to disclose information.

SEC. 1057. EMPLOYEE PROTECTION.

(a) IN GENERAL.—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

(1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of

any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term ''covered employee'' means any individual performing tasks related to the offering or provision of a consumer financial product or service.

(c) PROCEDURES AND TIMETABLES.—

(1) COMPLAINT.—

(A) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

(B) ACTIONS OF SECRETARY OF LABOR.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of —

(i) the filing of the complaint;

(ii) the allegations contained in the complaint;

(iii) the substance of evidence supporting the complaint; and

(iv) opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION BY SECRETARY OF LABOR.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

(B) NOTICE OF RELIEF AVAILABLE.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

(C) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(3) GROUNDS FOR DETERMINATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) REBUTTAL EVIDENCE.—Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) EVIDENTIARY STANDARDS.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCEDURES.—

(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) PENALTIES.—

(i) ORDER OF SECRETARY OF LABOR.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

(I) to take affirmative action to abate the violation;

(II) to reinstate the complainant to his or her former position, together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(III) to provide compensatory damages to the complainant.

(ii) PENALTY.—If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) PENALTY FOR FRIVOLOUS CLAIMS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

(D) DE NOVO REVIEW.—

(i) FAILURE OF THE SECRETARY TO ACT.—If the Secretary of Labor has not issued a final order within 210 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(ii) PROCEDURES.—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(II) the amount of back pay, with interest; and

(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(E) OTHER APPEALS.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

(5) FAILURE TO COMPLY WITH ORDER.—

(A) ACTIONS BY THE SECRETARY.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(B) CIVIL ACTIONS TO COMPEL COMPLIANCE.—A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(C) AWARD OF COSTS AUTHORIZED.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(D) MANDAMUS PROCEEDINGS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), and notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) NO PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph (3), and notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or enforceable to the extent

that it requires arbitration of a dispute arising under this section.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.

SEC. 1058. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

(a) DEFINED TERMS.—For purposes of this subtitle—

(1) the term ''consumer financial protection functions'' means research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the offering or provision of consumer financial products or services; and

(2) the terms ''transferor agency'' and ''transferor agencies'' mean, respectively—

(A) the Board of Governors (and any Federal reserve bank, as the context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Bureau.

(B) BOARD OF GOVERNORS AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Bureau.

(B) COMPTROLLER AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Bureau.

(B) DIRECTOR AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Bureau.

(B) CORPORATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—Except as provided in subparagraph (C), all consumer financial protection functions of the Federal Trade Commission are transferred to the Bureau.

(B) COMMISSION AUTHORITY.—Except as provided in subparagraph (C), the Bureau shall have all powers and duties that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

(C) CONTINUATION OF CERTAIN COMMISSION AUTHORITIES.—Notwithstanding subparagraphs (A) and (B), the Federal Trade Commission shall continue to have authority to enforce, and issue rules with respect to—

(i) the Credit Repair Organizations Act (15 U.S.C. 1679 et seq.);

(ii) section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

(iii) the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.).

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.

(B) NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.) are transferred to the Bureau.

(B) AUTHORITY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The Bureau shall have all powers and duties that were vested in the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), on the day before the designated transfer date.

(c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAMINATION AND ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (b) do not affect the authority of the agencies identified in subsection (b) from conducting examinations or initiating and maintaining enforcement proceedings, including performing appropriate supervisory and support functions relating thereto, in accordance with sections 1024, 1025, and 1026.

(d) EFFECTIVE DATE.—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1062. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Bureau under section 1061; and

(2) publish notice of that designated date in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 18 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 18 months after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 24 months after the date of enactment of this Act.

SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(4) does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Trade Commission before the designated transfer date with respect to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Trade Commission as a party to any such proceeding as of the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(6) does not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(2) does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(3) does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the Department of Housing and Urban Development with respect to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) or the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.) transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any proceeding commenced by or against the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of the Department of Housing and Urban Development transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, RULES, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and rules that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and rules, and shall not be enforceable by or against the Bureau.

(i) IDENTIFICATION OF RULES CONTINUED.—Not later than the designated transfer date, the Bureau—

(1) shall, after consultation with the head of each transferor agency, identify the rules continued under subsection (h) that will be enforced by the Bureau; and

(2) shall publish a list of such rules in the Federal Register.

(j) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Bureau.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Bureau according to its terms.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Bureau, in a manner that the Bureau and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Bureau, in a manner that the Bureau and the National Credit Union Administration Board, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(4) CERTAIN OFFICE OF THE COMPTROLLER OF THE CURRENCY EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Comptroller of the Currency shall—

(i) jointly determine the number of employees of the Office of the Comptroller of the Currency necessary to perform or support the consumer financial protection functions of the Office of the Comptroller of the Currency that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of the Comptroller of the Currency for transfer to the Bureau, in a manner that the Bureau and the Office of the Comptroller of the Currency, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of the Comptroller of the Currency identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(5) CERTAIN OFFICE OF THRIFT SUPERVISION EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Director of the Office of Thrift Supervision shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the consumer financial protection functions of the Office of Thrift Supervision that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Bureau, in a manner that the Bureau and the Office of Thrift Supervision, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of Thrift Supervision identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(6) CERTAIN EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Secretary of the Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection functions of the Department that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Bureau in a manner that the Bureau and the Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(7) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of a position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM FDIC, FTC, HUD, NCUA, OCC, AND OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Department of Housing and Urban Development shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—

(A) COMPARABILITY.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of an employee transferring to the Bureau from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Bureau are not subject to any additional certification requirements before being placed in a comparable examiner position at the Bureau examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area, as defined by the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau—

(A) to separate an employee for cause or for unacceptable performance;

(B) to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) to reassign a supervisory employee outside his or her locality pay area, as defined by the Office of Personnel Management, when the Bureau determines that the reassignment is necessary for the efficient operation of the Bureau.

(g) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received during the pay period immediately preceding the date of transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Bureau.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Bureau to increase the pay of a transferred employee.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Bureau is required—

(i) that reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Bureau as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Bureau is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in his or her existing retirement plan, through any period of continuous employment with the Bureau.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before his or her transfer to the Bureau may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—Notwithstanding any other provision of law, and subject to the terms and conditions of this section, a separate account in the Federal Reserve System retirement plan shall be established for Bureau employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Bureau shall deposit into the account established under clause (i) the employer contributions that the Bureau makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Bureau shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term ''existing retirement plan'' means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, in which the employee was enrolled on the day before the designated transfer date; and

(ii) the term ''Federal employee retirement program'' means the retirement program for Federal employees established by chapter 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Bureau decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Bureau takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; or

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Bureau decides not to continue participation in any long term care insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Bureau takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Bureau, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Bureau shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Bureau shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Bureau—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency,

including the Board of Governors, the Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Bureau shall coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 1065. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.

(b) SUNSET.—The authority provided in this section shall terminate 5 years after the date of enactment of this Act.

SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Bureau under this subtitle until the Director of the Bureau is confirmed by the Senate in accordance with section 1011.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date.

SEC. 1067. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Bureau—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Bureau shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Bureau shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITIES PLAN.—The Bureau shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;

(vi) job sharing;

(vii) parental leave benefits and childcare assistance;

(viii) domestic partner benefits;

(ix) other workplace flexibilities; or

(x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION PLAN.—The Bureau shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

(2) the rights of employees under chapter 71 of title 5, United States Code.

Subtitle G—Regulatory Improvements

SEC. 1071. GAO STUDY ON THE EFFECTIVENESS AND IMPACT OF VARIOUS APPRAISAL METHODS.

(a) IN GENERAL.—The Government Accountability Office shall conduct a study on the effectiveness and impact of various appraisal methods, including the cost approach, the comparative sales approach, the income approach, and others that may be available.

(b) STUDY.—Not later than—

(1) 1 year after the date of enactment of this Act, the Government Accountability Office shall submit a study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives;

(2) 90 days after the date of enactment of this Act, the Government Accountability Office shall provide a report on the status of the study and any preliminary findings to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) CONTENT OF STUDY.—The study required by this section shall include an examination of—

(1) the prevalence, alone or in combination, of these approaches in purchase-money and refinance mortgage transactions;

(2) the accuracy of the various approaches in assessing the property as collateral;

(3) whether and how the approaches contributed to price speculation in the previous cycle;

(4) the costs to consumers of these approaches;

(5) the disclosure of fees to consumers in the appraisal process;

(6) to what extent such approaches may be influenced by a conflict of interest between the mortgage lender and the appraiser and the mechanism by which the lender selects and compensates the appraiser; and

(7) the suitability of appraisal approaches in rural versus urban areas.

SEC. 1072. PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129A (15 U.S.C. 1639a) the following new section:

"SEC. 129B. PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.

"(a) PROHIBITED ON CERTAIN LOANS.—A residential mortgage loan that is not a qualified mortgage may not contain terms under which a consumer is required to pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

"(b) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—

"(1) IN GENERAL.—A qualified mortgage may not contain terms under which a consumer is required to pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of—

"(A) during the 1-year period beginning on the date on which the loan is consummated, an amount equal to 3 percent of the outstanding balance on the loan;

"(B) during the 1-year period beginning immediately after the end of the period described in subparagraph (A), an amount equal to 2 percent of the outstanding balance on the loan; and

"(C) during the 1-year period beginning immediately after the end of the 1-year period described in subparagraph (B), an amount equal to 1 percent of the outstanding balance on the loan.

"(2) PROHIBITION.—After the end of the 3-year period beginning on the date on which the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

"(c) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan, without offering to the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

"(d) PROHIBITIONS ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A creditor may not take any action in connection with a residential mortgage loan—

"(1) to structure a loan transaction as an open end consumer credit plan or another form of loan for the purpose and with the intent of evading the provisions of this section; or

"(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this section.

"(e) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

"(1) shall publish, and update at least weekly, average prime offer rates;

"(2) may publish multiple rates based on varying types of mortgage transactions; and

"(3) shall adjust the thresholds of 1.50 percentage points in subsection (g)(3)(A)(v)(I), 2.50 percentage points in subsection (g)(3)(A)(v)(II), and 3.50 percentage points in subsection (g)(3)(A)(v)(III), as necessary to reflect significant changes in market conditions and to effectuate the purposes of this section.

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Bureau shall prescribe regulations to carry out this section.

"(2) REVISION OF SAFE HARBOR CRITERIA.—The Bureau may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage, upon a finding that such regulations are necessary or appropriate—

"(A) to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section;

"(B) to effectuate the purposes of this section;

"(C) to prevent circumvention or evasion thereof; or

"(D) to facilitate compliance with this section.

"(3) INTERAGENCY HARMONIZATION.—

"(A) DETERMINATION OF QUALIFYING MORTGAGE TREATMENT.—The agencies and officials described in subparagraph (B) shall, in consultation with the Bureau, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be,

that are qualified mortgages for purposes of this section, upon a finding that such rules are consistent with the purposes of this section or are appropriate to prevent circumvention or evasion thereof or to facilitate compliance with this section.

''(B) AGENCIES AND OFFICIALS.—The agencies and officials described in this subparagraph are—

''(i) the Secretary of the Department of Housing and Urban Development, with regard to mortgages insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

''(ii) the Secretary of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs;

''(iii) the Secretary of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h));

''(iv) the Federal Housing Finance Agency, with regard to loans meeting the conforming loan standards of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

''(v) the Rural Housing Service, with regard to loans insured by the Rural Housing Service.

''(4) IMPLEMENTATION.—Regulations required or authorized to be prescribed under this subsection—

''(A) shall be prescribed in final form before the end of the 12-month period beginning on the date of enactment of this section; and

''(B) shall take effect not later than 18 months after the date of enactment of this section.

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

''(1) AVERAGE PRIME OFFER RATE.—The term 'average prime offer rate' means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics.

''(2) PREPAYMENT PENALTY.—The term 'prepayment penalty' means any penalty for paying all or part of the principal on an extension of credit before the date on which the principal is due, including a computation of a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined in section 933(d) of the Housing and Community Development Act of 1992 (15 U.S.C. 1615(d)).

''(3) QUALIFIED MORTGAGE.—The term 'qualified mortgage' means—

''(A) any residential mortgage loan—

''(i) that does not have an adjustable rate;

''(ii) that does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Bureau;

''(iii) that does not provide for a repayment schedule that results in negative amortization at any time;

''(iv) for which the terms are fully amortizing and which does not result in a balloon payment, where a 'balloon payment' is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

''(v) which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date on which the interest rate is set—

''(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date on which such interest rate is set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

''(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date on which such interest rate is set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); or

''(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;

''(vi) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

''(vii) for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

''(viii) that does not cause the total monthly debts of the consumer, including amounts under the loan, to exceed a percentage established by regulation of the monthly gross income of the consumer, or such other maximum percentage of such income, as may be prescribed by regulation under subsection (g), which rules shall take into consideration the income of the consumer available to pay regular expenses after payment of all installment and revolving debt;

''(ix) for which the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where the term 'points and fees' means points and fees as defined by Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)); and

''(x) for which the term of the loan does not exceed 30 years, except as such term may be extended under subsection (g); and

''(B) any reverse mortgage that is insured by the Federal Housing Administration or complies with the condition established in subparagraph (A)(v).

''(4) RESIDENTIAL MORTGAGE LOAN.—The term 'residential mortgage loan' means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.''.

(b) CONFORMING AMENDMENTS.—Section 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c)) is amended—

(1) by striking paragraph (2);

(2) by striking ''(1) IN GENERAL.—''; and

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

SEC. 1073. ASSISTANCE FOR ECONOMICALLY VULNERABLE INDIVIDUALS AND FAMILIES.

(a) HERA AMENDMENTS.—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) is amended—

(1) in subsection (a), by inserting in each of paragraphs (1), (2), (3), and (4) ''or economically vulnerable individuals and families'' after ''homebuyers'' each place that term appears;

(2) in subsection (b)(1), by inserting ''or economically vulnerable individuals and families'' after ''homebuyers'';

(3) in subsection (c)(1)—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(C) a nonprofit corporation that—

''(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

''(ii) specializes or has expertise in working with economically vulnerable individuals and families, but whose primary purpose is not provision of credit counseling services.''; and

(4) in subsection (d)(1), by striking ''not more than 5''.

(b) APPLICABILITY.—Amendments made by subsection (a) shall not apply to programs authorized by section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) that are funded with appropriations prior to fiscal year 2011.

SEC. 1074. REMITTANCE TRANSFERS.

(a) TREATMENT OF REMITTANCE TRANSFERS.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) in section 902(b) (15 U.S.C. 1693(b)), by inserting ''and remittance'' after ''electronic fund'';

(2) by redesignating sections 919, 920, 921, and 922 as sections 920, 921, 922, and 923, respectively; and

(3) by inserting after section 918 the following:

''SEC. 919. REMITTANCE TRANSFERS.

''(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

''(1) IN GENERAL.—Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Board.

''(2) STOREFRONT DISCLOSURES.—

''(A) IN GENERAL.—At every physical storefront location owned or controlled by a remittance transfer provider (with respect to remittance transfer activities), the remittance transfer provider shall prominently post, and update daily, a notice describing a model transfer for the amounts of $100 and $200 (in United States dollars) showing the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged for the 3 currencies to which that particular storefront sends the greatest number of remittance transfer payments, measured irrespective of the value of such payments. The values shall include all fees charged by the remittance transfer provider, taken out of the $100 and $200 amounts.

''(B) ELECTRONIC DISCLOSURE.—Subject to the rules prescribed by the Board, a remittance transfer provider shall prominently post, and update daily, a notice describing a model transfer, as described in subparagraph (A), on the Internet site owned or controlled by the remittance transfer provider which senders use to electronically conduct remittance transfer transactions.

''(3) SPECIFIC DISCLOSURES.—In addition to any other disclosures applicable under this title, and subject to paragraph (4), a remittance transfer provider shall provide, in writing and in a form that the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

''(A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure describing the amount of currency that will be sent to the designated recipient, using the values of the currency into which the funds will be exchanged; and

''(B) at the time at which the sender makes payment in connection with the remittance transfer—

''(i) a receipt showing—

''(I) the information described in subparagraph (A);

''(II) the promised date of delivery to the designated recipient; and

''(III) the name and either the telephone number or the address of the designated recipient; and

''(ii) a statement containing—

''(I) information about the rights of the sender under this section regarding the resolution of errors; and

''(II) appropriate contact information for—

''(aa) the remittance transfer provider; and

''(bb) each State or Federal agency supervising the remittance transfer provider, including its State licensing authority or Federal regulator, as applicable.

''(4) REQUIREMENTS RELATING TO DISCLOSURES.—With respect to each disclosure required to be provided under paragraph (3), and subject to paragraph (5), a remittance transfer provider shall—

''(A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (3), and an error resolution statement, as required by subsection (c), that clearly and conspicuously describe the information required to be disclosed therein; and

''(B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

''(5) EXEMPTION AUTHORITY.—The Board may, by rule, permit a remittance transfer provider to satisfy the requirements of—

''(A) paragraph (3)(A) orally, if the transaction is conducted entirely by telephone;

''(B) paragraph (3)(B), by mailing the documents required under such subparagraph to the sender, not later than 1 business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone;

''(C) subparagraphs (A) and (B) of paragraph (3) together in one written disclosure, but only to the extent that the information provided in accordance with paragraph (3)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer;

''(D) paragraph (3)(A), if a sender initiates a transaction to one of those countries displayed, in the exact amount of the transfers displayed pursuant to paragraph (2), if the Board finds it to be appropriate; and

''(E) paragraph (3)(A), without compliance with section 101(c) of the Electronic Signatures in Global Commerce Act, if a sender initiates the transaction electronically and the information is displayed electronically in a manner that the sender can keep.

''(b) FOREIGN LANGUAGE DISCLOSURES.—

''(1) IN GENERAL.—The disclosures required under this section shall be made in English and in each of the same foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.

''(2) ACCOUNTS.—In the case of a sender who holds a demand deposit, savings deposit, or other asset account with the remittance transfer provider (other than an occasional or incidental credit balance under an open end credit plan, as defined in section 103(i) of the Truth in Lending Act), the disclosures required under this section shall be made in the language or languages principally used by the remittance transfer provider to communicate to the sender with respect to the account.

''(c) REMITTANCE TRANSFER ERRORS.—

''(1) ERROR RESOLUTION.—

''(A) IN GENERAL.—If a remittance transfer provider receives oral or written notice from the sender within 180 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

''(B) REMEDIES.—Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

''(i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;

''(ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;

''(iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of senders; or

''(iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

''(2) RULES.—The Board shall establish, by rule issued not later than 1 calendar year after the date of enactment of the Restoring American Financial Stability Act of 2010, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

''(A) of the complaint of the sender;

''(B) that the sender provides the remittance transfer provider with respect to the alleged error; and

''(C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

''(d) APPLICABILITY OF THIS TITLE.—

''(1) IN GENERAL.—A remittance transfer that is not an electronic fund transfer, as defined in section 903, shall not be subject to any of the provisions of sections 905 through 913. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title, except for section 908, that are otherwise applicable to electronic fund transfers under this title.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

''(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder; or

''(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

''(e) ACTS OF AGENTS.—A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

''(f) DEFINITIONS.—As used in this section—

''(1) the term 'designated recipient' means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this Act;

''(2) the term 'remittance transfer' means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903;

''(3) the term 'remittance transfer provider' means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

''(4) the term 'sender' means a consumer who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.''.

(b) AUTOMATED CLEARINGHOUSE SYSTEM.—

(1) EXPANSION OF SYSTEM.—The Board of Governors shall work with the Federal reserve banks to expand the use of the automated clearinghouse system for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the number, volume, and size of such transfers;

(B) the significance of the volume of such transfers relative to the external financial flows of the receiving country, including—

(i) the total amount transferred; and

(ii) the total volume of payments made by United States Government agencies to beneficiaries and retirees living abroad;

(C) the feasibility of such an expansion; and

(D) the ability of the Federal Reserve System to establish payment gateways in different geographic regions and currency zones to receive remittance transfers and route them through the payments systems in the destination countries.

(2) REPORT TO CONGRESS.—Not later than one calendar year after the date of enactment of this Act, and on April 30 biennially thereafter during the 10-year period beginning on that date of enactment, the Board of Governors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this subsection. The report shall include an analysis of adoption rates of International ACH Transactions rules and formats, the efficacy of increasing adoption rates, and potential recommendations to increase adoption.

(c) EXPANSION OF FINANCIAL INSTITUTION PROVISION OF REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—Each of the Federal banking agencies and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(2) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—As part of its duties as members of the Financial Literacy and Education Commission, the Bureau, the Federal banking

agencies, and the National Credit Union Administration shall assist the Financial Literacy and Education Commission in executing the Strategy for Assuring Financial Empowerment (or the ''SAFE Strategy''), as it relates to remittances.

(d) FEDERAL CREDIT UNION ACT CONFORMING AMENDMENT.—Paragraph (12) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended to read as follows:

''(12) in accordance with regulations prescribed by the Board—

''(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers);

''(B) to provide remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act, to persons in the field of membership; and

''(C) to cash checks and money orders for persons in the field of membership for a fee;''.

Subtitle H—Conforming Amendments

SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL ACT.

Effective on the date of enactment of this Act, the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended—

(1) in section 8G(a)(2), by inserting ''and the Bureau of Consumer Financial Protection'' after ''Board of Governors of the Federal Reserve System'';

(2) in section 8G(c), by adding at the end the following: ''For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.''; and

(3) in section 8G(g)(3), by inserting ''and the Bureau of Consumer Financial Protection'' after ''Board of Governors of the Federal Reserve System'' the first place that term appears.

SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.

Effective on the date of enactment of this Act, section 552a of title 5, United States Code, is amended by adding at the end the following:

''(w) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.''.

SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) IN GENERAL.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(1) in section 803 (12 U.S.C. 3802(1)), by striking ''1974'' and all that follows through ''described and defined'' and inserting the following: ''1974), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined''; and

(2) in section 804 (12 U.S.C. 3803)—

(A) in subsection (a)—

(i) in each of paragraphs (1), (2), and (3), by inserting after ''transactions made'' each place that term appears ''on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,'';

(ii) in paragraph (2), by striking ''and'' at the end;

(iii) in paragraph (3), by striking the period at the end and inserting ''; and''; and

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

''(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.'';

(B) by striking subsection (c) and inserting the following:

''(c) PREEMPTION OF STATE LAW.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.''; and

(C) by adding at the end the following:

''(d) BUREAU ACTIONS.—The Bureau of Consumer Financial Protection shall—

''(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

''(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

''(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

''(e) DESIGNATED TRANSFER DATE.—As used in this section, the term 'designated transfer date' means the date determined under section 1062 of the Consumer Financial Protection Act of 2010.''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the designated transfer date.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.

SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'', except in section 918 (as so designated by the Credit Card Act of 2009) (15 U.S.C. 1693o);

(2) in section 903 (15 U.S.C. 1693a), by striking paragraph (3) and inserting the following:

''(3) the term 'Bureau' means the Bureau of Consumer Financial Protection;'';

(3) in section 916(d) (as so designated by section 401 of the Credit CARD Act of 2009) (15 U.S.C. 1693m)—

(A) by striking ''FEDERAL RESERVE SYSTEM'' and inserting ''BUREAU OF CONSUMER FINANCIAL PROTECTION''; and

(B) by striking ''Federal Reserve System'' and inserting ''Bureau of Consumer Financial Protection''; and

(4) in section 918 (as so designated by the Credit CARD Act of 2009) (15 U.S.C. 1693o)—

(A) in subsection (a)—

(i) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance''; and

(ii) by striking paragraph (2) and inserting the following:

''(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;''; and

(B) by striking subsection (c) and inserting the following:

''(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.''.

SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 702 (15 U.S.C. 1691a), by striking subsection (c) and inserting the following:

''(c) The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(3) in section 703 (15 U.S.C. 1691b)—

(A) by striking the section heading and inserting the following:

''SEC. 703. PROMULGATION OF REGULATIONS BY THE BUREAU.'';

(B) by striking ''(a) REGULATIONS.—'';

(C) by striking subsection (b);

(D) by redesignating paragraphs (1) through (5) as subsections (a) through (e), respectively; and

(E) in subsection (c), as so redesignated, by striking ''paragraph (2)'' and inserting ''subsection (b)'';

(4) in section 704 (15 U.S.C. 1691c)—

(A) in subsection (a)—

(i) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Protection Financial Protection Act of 2010''; and

(ii) by striking paragraph (2) and inserting the following:

''(2) Subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau.'';

(B) by striking subsection (c) and inserting the following:

''(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under

the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce any rule prescribed by the Bureau under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.''; and

(C) in subsection (d), by striking ''Board'' and inserting ''Bureau''; and

(5) in section 706(e) (15 U.S.C. 1691e(e))—

(A) in the subsection heading—

(i) by striking ''BOARD'' each place that term appears and inserting ''BUREAU''; and

(ii) by striking ''FEDERAL RESERVE SYSTEM'' and inserting ''BUREAU OF CONSUMER FINANCIAL PROTECTION''; and

(B) by striking ''Federal Reserve System'' and inserting ''Bureau of Consumer Financial Protection''.

SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) AMENDMENT TO SECTION 603.—Section 603(d)(1) of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended by inserting after ''Board'' the following '', jointly with the Director of the Bureau of Consumer Financial Protection,''.

(b) AMENDMENTS TO SECTION 604.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—

(1) by inserting after ''Board'' each place that term appears, other than in subsection (f), the following: '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) in subsection (f), by striking ''Board.'' each place that term appears and inserting the following: ''Board, jointly with the Director of the Bureau of Consumer Financial Protection.''.

(c) AMENDMENTS TO SECTION 605.—Section 605 of the Expedited Funds Availability Act (12 U.S.C. 4004) is amended—

(1) by inserting after ''Board'' each place that term appears, other than in the heading for section 605(f)(1), the following: '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) in subsection (f)(1), in the paragraph heading, by inserting ''AND BUREAU'' after ''BOARD''.

(d) AMENDMENTS TO SECTION 609.—Section 609 of the Expedited Funds Availability Act (12 U.S.C. 4008) is amended:

(1) in subsection (a), by inserting after ''Board'' the following '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) by striking subsection (e) and inserting the following:

''(e) CONSULTATIONS.—In prescribing regulations under subsections (a) and (b), the Board and the Director of the Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.''.

(e) EXPEDITED FUNDS AVAILABILITY IMPROVEMENTS.—Section 603 of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended—

(1) in subsection (a)(2)(D), by striking ''$100'' and inserting ''$200''; and

(2) in subsection (b)(3)(C), in the subparagraph heading, by striking ''$100'' and inserting ''$200''; and

(3) in subsection (c)(1)(B)(iii), in the clause heading, by striking ''$100'' and inserting ''$200''.

(f) REGULAR ADJUSTMENTS FOR INFLATION.—Section 607 of the Expedited Funds Availability Act (12 U.S.C. 4006) is amended by adding at the end the following:

''(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR INFLATION.—The dollar amounts under this title shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $25.''.

SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.

The Fair Credit Billing Act (15 U.S.C. 1666–1666j) is amended by striking ''Board'' each place that term appears and inserting ''Bureau''.

SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT AND THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT.

(a) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following:

''(w) The term 'Bureau' means the Bureau of Consumer Financial Protection.''; and

(2) except as otherwise specifically provided in this subsection—

(A) by striking ''Federal Trade Commission'' each place that term appears and inserting ''Bureau'';

(B) by striking ''FTC'' each place that term appears and inserting ''Bureau'';

(C) by striking ''the Commission'' each place that term appears and inserting ''the Bureau''; and

(D) by striking ''The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly'' each place that term appears and inserting ''The Bureau shall'';

(3) in section 603(k)(2) (15 U.S.C. 1681a(k)(2)), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Bureau'';

(4) in section 604(g) (15 U.S.C. 1681b(g))—

(A) in paragraph (3), by striking subparagraph (C) and inserting the following:

''(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau (consistent with the enforcement authorities prescribed under section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).'';

(B) by striking paragraph (5) and inserting the following:

''(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

''(A) REGULATIONS REQUIRED.—The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.''; and

(C) by striking paragraph (6);

(5) in section 611(e)(2) (15 U.S.C. 1681i(e)), by striking paragraph (2) and inserting the following:

''(2) EXCLUSION.—Complaints received or obtained by the Bureau pursuant to its investigative authority under the Consumer Financial Protection Act of 2010 shall not be subject to paragraph (1).'';

(6) in section 615(h)(6) (15 U.S.C. 1681m(h)(6)), by striking subparagraph (A) and inserting the following:

''(A) RULES REQUIRED.—The Bureau shall prescribe rules to carry out this subsection.'';

(7) in section 621 (15 U.S.C. 1681s)—

(A) by striking subsection (a) and inserting the following:

''(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

''(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission, with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (b). For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers (except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010), including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions of such Act are part of this title.

''(2) PENALTIES.—

''(A) KNOWING VIOLATIONS.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

''(B) DETERMINING PENALTY AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of such prior conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

''(C) LIMITATION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1), unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may

not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.'';

(8) by striking subsection (b) and inserting the following:

''(b) ENFORCEMENT BY OTHER AGENCIES.—

''(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to section 615(d) shall be enforced under—

''(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

''(i) any national bank, and any Federal branch or Federal agency of a foreign bank, by the Office of the Comptroller of the Currency;

''(ii) any member bank of the Federal Reserve System (other than a national bank), a branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), a commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

''(iii) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and any insured State branch of a foreign bank, by the Board of Directors of the Federal Deposit Insurance Corporation;

''(B) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

''(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

''(D) subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

''(E) the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.), by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

''(F) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act;

''(G) the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission; and

''(H) the Federal securities laws, and any other laws that are subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person that is subject to the jurisdiction of the Securities and Exchange Commission.

''(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).'';

(9) by striking subsection (e) and inserting the following:

''(e) REGULATORY AUTHORITY.—The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this Act. The regulations prescribed by the Bureau under this subsection shall apply to any person that is subject to this Act, notwithstanding the enforcement authorities granted to other agencies under this section.''; and

(10) in section 623 (15 U.S.C. 1681s–2)—

(A) in subsection (a)(7), by striking subparagraph (D) and inserting the following:

''(D) MODEL DISCLOSURE.—

''(i) DUTY OF BUREAU.—The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

''(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the Bureau.

''(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format.''; and

(B) by striking subsection (e) and inserting the following:

''(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

''(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

''(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

''(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

''(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Bureau shall—

''(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

''(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

''(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

''(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.''.

(b) FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s–3 note) is amended by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—Regulations to carry out section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s–3), shall be prescribed, as described in paragraph (2), by—

''(A) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities;

''(B) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; and

''(C) the Bureau, with respect to other entities subject to this Act.''.

SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by striking ''Commission'' each place that term appears and inserting ''Bureau'';

(2) in section 803 (15 U.S.C. 1692a)—

(A) by striking paragraph (1) and inserting the following:

''(1) The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(3) in section 814 (15 U.S.C. 1692l)—

(A) by striking subsection (a) and inserting the following:

''(a) FEDERAL TRADE COMMISSION.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with this title shall be enforced by the Federal Trade Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under subsection (b). For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.''; and

(B) in subsection (b)—

(i) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance''; and

(ii) by striking paragraph (2) and inserting the following:

''(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;''; and

(4) in subsection (d), by striking ''Neither the Commission'' and all that follows through the end of the subsection and inserting the following: ''The Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this Act.''.

SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 8(t) (12 U.S.C. 1818(t)), by adding at the end the following:

''(6) REFERRAL TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.''; and

(2) in section 43 (12 U.S.C. 1831t)—

(A) in subsection (c), by striking ''Federal Trade Commission'' and inserting ''Bureau'';

(B) in subsection (d), by striking ''Federal Trade Commission'' and inserting ''Bureau'';

(C) in subsection (e)—

(i) in paragraph (2), by striking ''Federal Trade Commission'' and inserting ''Bureau''; and

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

''(5) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.''; and

(D) in subsection (f)—

(i) by striking paragraph (1) and inserting the following:

''(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.''; and

(ii) in paragraph (2), by striking subparagraph (C) and inserting the following:

''(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.''.

SEC. 1091. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 504(a)(1) (15 U.S.C. 6804(a)(1))—

(A) by striking ''The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,'' and inserting ''The Bureau of Consumer Financial Protection and''; and

(B) by striking '', and the Federal Trade Commission'';

(2) in section 505(a) (15 U.S.C. 6805(a))—

(A) by striking ''This subtitle'' and all that follows through ''as follows:'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, this subtitle and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:'';

(B) in paragraph (1)—

(i) in subparagraph (B), by inserting ''and'' after the semicolon;

(ii) in subparagraph (C), by striking ''; and'' and inserting a period; and

(iii) by striking subparagraph (D); and

(C) by adding at the end the following:

''(8) Under the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau under that Act, but not with respect to the standards under section 501.''; and

(3) in section 505(b)(1) (15 U.S.C. 6805(b)(1)), by inserting '', other than the Bureau of Consumer Financial Protection,'' after ''subsection (a)''.

SEC. 1092. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT.

The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(1) except as otherwise specifically provided in this section, by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 303 (12 U.S.C. 2802)—

(A) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(B) by inserting before paragraph (2) the following:

''(1) the term 'Bureau' means the Bureau of Consumer Financial Protection;'';

(3) in section 304 (12 U.S.C. 2803)—

(A) in subsection (b)—

(i) in paragraph (4), by inserting ''age,'' before ''and gender'';

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

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

(iv) by adding at the end the following:

''(5) the number and dollar amount of mortgage loans grouped according to measurements of—

''(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

''(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

''(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

''(D) such other information as the Bureau may require; and

''(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

''(A) the value of the real property pledged or proposed to be pledged as collateral;

''(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

''(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;

''(D) the actual or proposed term in months of the mortgage loan;

''(E) the channel through which application was made, including retail, broker, and other relevant categories;

''(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

''(G) as the Bureau may determine to be appropriate, a universal loan identifier;

''(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

''(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe, except that the Bureau shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors; and

''(J) such other information as the Bureau may require.'';

(B) in subsection (i), by striking ''subsection (b)(4)'' and inserting ''subsections (b)(4), (b)(5), and (b)(6)'';

(C) in subsection (j)—

(i) in paragraph (1), by striking ''(as'' and inserting ''(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise'';

(ii) by striking paragraph (3) and inserting the following:

''(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require''; and

(iii) in paragraph (2)(A), by striking ''in the format in which such information is maintained by the institution'' and inserting ''in such formats as the Bureau may require'';

(D) in subsection (m), by striking paragraph (2) and inserting the following:

''(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require'';

(E) by striking subsection (h) and inserting the following:

''(h) SUBMISSION TO AGENCIES.—

''(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this title, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in cooperation with other appropriate regulators described in paragraph (2), shall develop regulations that—

''(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public;

''(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title;

''(C) require disclosure of the class of the purchaser of such loans; and

''(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

''(2) OTHER APPROPRIATE AGENCIES.—The appropriate regulators described in this paragraph are—

''(A) the Office of the Comptroller of the Currency (hereafter referred to in this Act as 'Comptroller') for national banks and Federal branches, Federal agencies of foreign banks, and savings associations;

''(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;

''(C) the National Credit Union Administration Board for credit unions; and

''(D) the Secretary of Housing and Urban Development for other lending institutions not regulated by the agencies referred to in subparagraphs (A) through (C).''; and

(F) by adding at the end the following:

''(n) TIMING OF CERTAIN DISCLOSURES.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraph (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.'';

(4) in section 305 (12 U.S.C. 2804)—

(A) by striking subsection (b) and inserting the following:

''(b) POWERS OF CERTAIN OTHER AGENCIES.—

''(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements of this title shall be enforced—

''(A) under section 8 of the Federal Deposit Insurance Act, in the case of—

''(i) any national bank, and any Federal branch or Federal agency of a foreign bank,

by the Office of the Comptroller of the Currency;

''(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

''(iii) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C), by the Federal Deposit Insurance Corporation;

''(B) under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

''(C) under the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

''(D) with respect to other lending institutions, by the Secretary of Housing and Urban Development.

''(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).''; and

(B) by adding at the end the following:

''(d) OVERALL ENFORCEMENT AUTHORITY OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of this title.'';

(5) in section 306 (12 U.S.C. 2805(b)), by striking subsection (b) and inserting the following:

''(b) EXEMPTION AUTHORITY.—The Bureau may, by regulation, exempt from the requirements of this title any State-chartered depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the Office of the Comptroller of the Currency under section 8 of the Federal Deposit Insurance Act, in the case of national banks and savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation.''; and

(6) by striking section 307 (12 U.S.C. 2806) and inserting the following:

''SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

''(a) IN GENERAL.—

''(1) CONSULTATION REQUIRED.—The Director of the Bureau of Consumer Financial Protection, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

''(3) CONTRACTING AUTHORITY.—The Director of the Bureau of Consumer Financial Protection is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

''(b) RECOMMENDATIONS TO CONGRESS.—The Director of the Bureau of Consumer Financial Protection shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Bureau of Consumer Financial Protection deems appropriate to carry out the purpose of this title.''.

SEC. 1093. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in subsection (a)—

(A) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance'';

(B) in paragraph (2), by striking ''and'' at the end;

(C) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(4) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection.''; and

(2) in subsection (b)(2), by inserting before the period at the end the following: '', subject to subtitle B of the Consumer Financial Protection Act of 2010''.

SEC. 1094. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.

The Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) is amended—

(1) in section 158(a), by striking ''Consumer Advisory Council of the Board'' and inserting ''Advisory Board to the Bureau''; and

(2) by striking ''Board'' each place that term appears and inserting ''Bureau''.

SEC. 1095. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009.

Section 626 of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note) is amended—

(1) by striking subsection (a) and inserting the following:

''(a)(1) The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

''(2) The Bureau of Consumer Financial Protection shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection.''; and

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

''(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in practices that violate such rule, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

''(A) to enjoin that practice;

''(B) to enforce compliance with the rule;

''(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or

''(D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act, and such other relief as the court deems appropriate.'';

(B) in paragraphs (2) and (3), by striking ''the primary Federal regulator'' each time the term appears and inserting ''the Bureau of Consumer Financial Protection or the Commission, as appropriate'';

(C) in paragraph (3), by inserting ''and subject to subtitle B of the Consumer Financial Protection Act of 2010,'' after ''paragraph (2),''; and

(D) in paragraph (6), by striking ''the primary Federal regulator'' each place that term appears and inserting ''the Bureau of Consumer Financial Protection or the Commission''.

SEC. 1096. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (7), by striking ''and'' at the end;

(B) in paragraph (8), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(9) the term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(2) in section 4 (12 U.S.C. 2603)—

(A) in subsection (a), by striking the first sentence and inserting the following: ''The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'';

(B) by striking ''Secretary'' each place that term appears and inserting ''Bureau''; and

(C) by striking ''form'' each place that term appears and inserting ''forms'';

(3) in section 5 (12 U.S.C. 2604)—

(A) by striking ''Secretary'' each place that term appears and inserting ''Bureau''; and

(B) in subsection (a), by striking the first sentence and inserting the following: ''The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this title, in order to help

persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.'';

(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

(A) by striking ''Secretary'' and inserting ''Bureau''; and

(B) by striking '', by regulations that shall take effect not later than April 20, 1991,'';

(5) in section 7(b) (12 U.S.C. 2606(b)) by striking ''Secretary'' and inserting ''Bureau'';

(6) in section 8(d) (12 U.S.C. 2607(d))—

(A) in the subsection heading, by inserting ''BUREAU AND'' before ''SECRETARY''; and

(B) by striking paragraph (4), and inserting the following:

''(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010.''.

(7) in section 10(c) (12 U.S.C. 2609(c) and (d)), by striking ''Secretary'' and inserting ''Bureau'';

(8) in section 16 (12 U.S.C. 2614), by inserting ''the Bureau,'' before ''the Secretary'';

(9) in section 18 (12 U.S.C. 2616), by striking ''Secretary'' each place that term appears and inserting ''Bureau''; and

(10) in section 19 (12 U.S.C. 2617)—

(A) in the section heading by striking ''**SECRETARY**'' and inserting ''**BUREAU**'';

(B) by striking ''Secretary'' each place that term appears and inserting ''Bureau'';

(C) in subsection (b), by inserting ''the Bureau'' before ''the Secretary''; and

(D) in subsection (c), by inserting ''or the Bureau'' after ''the Secretary'' each time that term appears.

SEC. 1097. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101—

(A) in paragraph (6)—

(i) in subparagraph (A), by inserting ''and'' after the semicolon;

(ii) in subparagraph (B), by striking ''and'' at the end; and

(iii) by striking subparagraph (C); and

(B) in paragraph (7), by striking subparagraph (E), and inserting the following:

''(E) the Bureau of Consumer Financial Protection;'';

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking ''and the Commodity Futures Trading Commission is permitted'' and inserting ''the Commodity Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted''; and

(3) in section 1113 (12 U.S.C. 3413), by adding at the end the following new subsection:

''(r) DISCLOSURE TO THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Nothing in this title shall apply to the examination by or disclosure to the Bureau of Consumer Financial Protection of financial records or information in the exercise of its authority with respect to a financial institution.''.

SEC. 1098. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking ''a Federal banking agency'' each place that term appears, other than in paragraphs (7) and (11) of section 1503 and section 1507(a)(1), and inserting ''the Bureau'';

(2) by striking ''Federal banking agencies'' each place that term appears and inserting ''Bureau''; and

(3) by striking ''Secretary'' each place that term appears and inserting ''Director'';

(4) in section 1503 (12 U.S.C. 5102)—

(A) by redesignating paragraphs (2) through (12) as (3) through (13), respectively;

(B) by striking paragraph (1) and inserting the following:

''(1) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.

''(2) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.''; and

(C) by striking paragraph (10), as so designated by this section, and inserting the following:

''(10) DIRECTOR.—The term 'Director' means the Director of the Bureau of Consumer Financial Protection.''; and

(5) in section 1507 (12 U.S.C. 5106)—

(A) in subsection (a)—

(i) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of the Consumer Financial Protection Act of 2010.''; and

(ii) in paragraph (2)—

(I) by striking ''appropriate Federal banking agency and the Farm Credit Administration'' and inserting ''Bureau''; and

(II) by striking ''employees's identity'' and inserting ''identity of the employee''; and

(B) in subsection (b), by striking ''through the Financial Institutions Examination Council, and the Farm Credit Administration'', and inserting ''and the Bureau of Consumer Financial Protection'';

(6) in section 1508 (12 U.S.C. 5107)—

(A) by striking the section heading and inserting the following: ''**SEC. 1508. BUREAU OF CONSUMER FINANCIAL PROTECTION BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM.**''; and

(B) by adding at the end the following:

''(f) REGULATION AUTHORITY.—

''(1) IN GENERAL.—The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

''(2) CONSIDERATIONS.—In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.'';

(7) by striking section 1510 (12 U.S.C. 5109) and inserting the following:

''SEC. 1510. FEES.

''The Bureau, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.'';

(8) by striking section 1513 (12 U.S.C. 5112) and inserting the following:

''SEC. 1513. LIABILITY PROVISIONS.

''The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.''; and

(9) in section 1514 (12 U.S.C. 5113) in the section heading, by striking ''**UNDER HUD BACKUP LICENSING SYSTEM**'' and inserting ''**BY THE BUREAU**''.

SEC. 1099. AMENDMENTS TO THE TRUTH IN LENDING ACT.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(1) in section 103 (5 U.S.C. 1602)—

(A) by redesignating subsections (b) through (bb) as subsections (c) through (cc), respectively; and

(B) by inserting after subsection (a) the following:

''(b) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(2) by striking ''Board'' each place that term appears, other than in section 140(d) and section 108(a), as amended by this section, and inserting ''Bureau'';

(3) by striking ''Federal Trade Commission'' each place that term appears, other than in section 108(c) and section 129(m), as amended by this Act, and other than in the context of a reference to the Federal Trade Commission Act, and inserting ''Bureau'';

(4) in section 105(a) (15 U.S.C. 1604(a)), in the second sentence—

(A) by striking ''Except in the case of a mortgage referred to in section 103(aa), these regulations may contain such'' and inserting ''Except with respect to the provisions of section 129 that apply to a mortgage referred to in section 103(aa), such regulations may contain such additional requirements,''; and

(B) by inserting ''all or'' after ''exceptions for'';

(5) in section 105(b) (15 U.S.C. 1604(b)), by striking the first sentence and inserting the following: ''The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'';

(6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)), by inserting ''all or'' after ''from all or part of this title'';

(7) in section 108 (15 U.S.C. 1607)—

(A) by striking subsection (a) and inserting the following:

''(a) ENFORCING AGENCIES.—Except as otherwise provided in subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under—

''(1) section 8 of the Federal Deposit Insurance Act, in the case of—

''(A) any national bank, and Federal branch or Federal agency of a foreign bank, by the Office of the Comptroller of the Currency;

''(B) any member bank of the Federal Reserve System (other than a national bank), any branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), any commercial lending company owned or controlled by a foreign bank, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

''(C) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and an insured State branch of a foreign bank, by the Board of Directors of the Federal Deposit Insurance Corporation;

''(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

''(3) the Federal Credit Union Act, by the Director of the National Credit Union Administration, with respect to any Federal credit union;

''(4) the Federal Aviation Act of 1958, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

''(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act; and

''(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.''; and

(B) by striking subsection (c) and inserting the following:

''(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.'';

(8) in section 129 (15 U.S.C. 1639), by striking subsection (m) and inserting the following:

''(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (l)(2) shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.''; and

(9) in chapter 5 (15 U.S.C. 1667 et seq.)—

(A) by striking ''the Board'' each place that term appears and inserting ''the Bureau''; and

(B) by striking ''The Board'' each place that term appears and inserting ''The Bureau''.

SEC. 1100. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 270(a) (12 U.S.C. 4309)—

(A) by striking ''Compliance'' and inserting ''Except as otherwise provided in subtitle B of the Consumer Financial Protection Act of 2010, compliance'';

(B) in paragraph (1)—

(i) in subparagraph (B), by striking ''and'' at the end; and

(ii) by striking subparagraph (C);

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

(D) by adding at the end the following:

''(3) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau.'';

(3) in section 272(b) (12 U.S.C. 4311(b)), by striking ''regulation prescribed by the Board'' each place that term appears and inserting ''regulation prescribed by the Bureau''; and

(4) in section 274 (12 U.S.C. 4313), by striking paragraph (4) and inserting the following:

''(4) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.''.

SEC. 1101. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) AMENDMENTS TO SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended by striking subsections (b) and (c) and inserting the following:

''(b) RULEMAKING AUTHORITY.—The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5, United States Code. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the Bureau of Consumer Financial Protection.

''(c) VIOLATIONS.—Any violation of any rule prescribed under subsection (a)—

''(1) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices; and

''(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act regarding unfair, deceptive, or abusive acts or practices.''.

(b) AMENDMENTS TO SECTION 4.—Section 4(d) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6103(d)) is amended by inserting after ''Commission'' each place that term appears the following: ''or the Bureau of Consumer Financial Protection''.

(c) AMENDMENTS TO SECTION 5.—Section 5(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6104(c)) is amended by inserting after ''Commission'' each place that term appears the following: ''or the Bureau of Consumer Financial Protection''.

(d) AMENDMENT TO SECTION 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following:

''(d) ENFORCEMENT BY BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, and subject to subtitle B of the Consumer Financial Protection Act of 2010, this Act shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of the Consumer Financial Protection Act of 2010.''.

SEC. 1102. AMENDMENTS TO THE PAPERWORK REDUCTION ACT.

(a) DESIGNATION AS AN INDEPENDENT AGENCY.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) is amended by inserting ''the Bureau of Consumer Financial Protection, the Office of Financial Research,'' after ''the Securities and Exchange Commission,''.

(b) COMPARABLE TREATMENT.—Section 3513 of title 44, United States Code, is amended by adding at the end the following:

''(c) COMPARABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.''.

SEC. 1103. ADJUSTMENTS FOR INFLATION IN THE TRUTH IN LENDING ACT.

(a) CAPS.—

(1) CREDIT TRANSACTIONS.—Section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by striking ''$25,000'' and inserting ''$50,000''.

(2) CONSUMER LEASES.—Section 181(1) of the Truth in Lending Act (15 U.S.C. 1667(1)) is amended by striking ''$25,000'' and inserting ''$50,000''.

(b) ADJUSTMENTS FOR INFLATION.—On and after December 31, 2011, the Bureau may adjust annually the dollar amounts described in sections 104(3) and 181(1) of the Truth in Lending Act (as amended by this section), by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $100, or $1,000, as applicable.

SEC. 1104. EFFECTIVE DATE.

Except as otherwise provided in this subtitle and the amendments made by this subtitle, this subtitle and the amendments made by this subtitle, other than sections 1081 and 1082, shall become effective on the designated transfer date.

SA 3832. Mr. SESSIONS (for himself, Mr. BUNNING, Mr. DEMINT, Mr. ENSIGN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title II and insert the following:

TITLE II—BANKRUPTCY INTEGRITY AND ACCOUNTABILITY ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Bankruptcy Integrity and Accountability Act of 2010''.

SEC. 202. AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.

Title 28, United States Code, is amended—

(1) in section 1408, by striking ''section 1410'' and inserting ''sections 1409A and 1410'';

(2) by inserting after section 1409 the following:

''§ 1409A. Venue of cases involving non-bank financial institutions

''A case under chapter 14 may be commenced in the district court of the United States for the district—

''(1) in which the debtor has its domicile, principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor's affiliate or subsidiary, if a Federal Reserve Bank is located in that district;

''(2) if venue does not exist under paragraph (1), in which there is a Federal Reserve Bank and in a Federal Reserve district in which the debtor has its domicile, principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor's affiliate or subsidiary; or

''(3) if venue does not exist under paragraph (1) or (2), in which there is a Federal Reserve Bank and in a Federal circuit adjacent to the Federal circuit in which the debtor has its domicile, principal place of business or principal assets in the United States.'', and

(3) by amending the table of sections for chapter 87, by inserting after the item relating to section 1408 the following:

''1409A. Venue of cases involving non-bank financial institutions.''.

SEC. 203. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (26) the following:

''(26A) The term 'functional regulator' means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.'';

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively;

(3) by inserting after paragraph (38) the following:

''(38A) the term 'Financial Stability Oversight Council' means the entity established in section 111 of the Restoring American Financial Stability Act of 2010''; and

(4) by inserting after paragraph (40) the following:

''(40A) The term 'non-bank financial institution' means an institution the business of which is primarily engaged in financial activities that is not an insured depository institution.''.

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a) by striking ''13'' and inserting ''13, and 14'';

(2) by redesignating subsection (k) as subsection (l); and

(3) by inserting after subsection (j) the following:

''(k) Chapter 14 applies only in a case under such chapter.''.

(c) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking ''or'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(4) a non-bank financial institution that has not been a debtor under chapter 14 of this title.''; and

(2) in subsection (d), by striking ''or commodity broker'' and inserting '', commodity broker, or a non-bank financial institution''.

(d) INVOLUNTARY CASES.—Section 303 of title 11, the United States Code, is amended—

(1) in subsection (a) by striking ''or 11'' and inserting '', 11, or 14''; and

(2) in subsection (b) by striking ''or 11'' and inserting '', 11, or 14''.

(e) OBTAINING CREDIT.—Section 364 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this section, the trustee may not, and the court may not authorize the trustee to, obtain credit, if the source of that credit either directly or indirectly is the United States. Nor shall any Federal funds be made available through the Federal Reserve System, including through the authority of the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343).''.

(f) CHAPTER 14.—Title 11, United States Code, is amended—

(1) by inserting the following after chapter 13:

''CHAPTER 14—ADJUSTMENT TO THE DEBTS OF A NON-BANK FINANCIAL INSTITUTION

''1401. Inapplicability of other sections.
''1402. Applicability of chapter 11 to cases under this chapter.
''1403. Prepetition consultation.
''1404. Appointment of trustee.
''1405. Right to be heard.
''1406. Right to communicate.
''1407. Exemption with respect to certain contracts or agreements.
''1408. Conversion or dismissal.

''§ 1401. Inapplicability of other sections

''Except as provided in section 1407, sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561 do not apply in a case under this chapter.

''§ 1402. Applicability of chapter 11 to cases under this chapter

''With the exception of sections 1104(d), 1109, 1112(a), 1115, and 1116, subchapters I, II, and III of chapter 11 apply in a case under this chapter.

''§ 1403. Prepetition consultation

''(a) Subject to subsection (b)—

''(1) a non-bank financial institution may not be a debtor under this chapter unless that institution has, at least 10 days prior to the date of the filing of the petition by such institution, taken part in the consultation described in subsection (c); and

''(2) a creditor may not commence an involuntary case under this chapter unless, at least 10 days prior to the date of the filing of the petition by such creditor, the creditor notifies the non-bank financial institution, the functional regulator, and the Financial Stability Oversight Council of its intent to file a petition and requests a consultation as described in subsection (c).

''(b) If the non-bank financial institution, the functional regulator, and the Financial Stability Oversight Council, in consultation with any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, certify that the immediate filing of a petition under section 301 or 303 is necessary, or that an immediate filing would be in the interests of justice, a petition may be filed notwithstanding subsection (a).

''(c) The non-bank financial institution, the functional regulator, the Financial Stability Oversight Council, and any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor shall engage in prepetition consultation in order to attempt to avoid the need for the non-bank financial institution's liquidation or reorganization in bankruptcy, to make any liquidation or reorganization of the non-bank financial institution under this title more orderly, or to aid in the nonbankruptcy resolution of any of the non-bank financial institution's components under its nonbankruptcy insolvency regime. Such consultation shall specifically include the attempt to negotiate forbearance of claims between the non-bank financial institution and its creditors if such forbearance would likely help to avoid the commencement of a case under this title, would make any liquidation or reorganization under this title more orderly, or would aid in the nonbankruptcy resolution of any of the non-bank financial institution's components under its nonbankruptcy insolvency regime. Additionally, the consultation shall consider whether, if a petition is filed under section 301 or 303, the debtor should file a motion for an exemption authorized by section 1407.

''(d) The court may allow the consultation process to continue for 30 days after the petition, upon motion by the debtor or a creditor. Any post-petition consultation proceedings authorized should be facilitated by the court's mediation services, under seal, and exclude ex parte communications.

''(e) The Financial Stability Oversight Council and the functional regulator shall publish and transmit to Congress a report documenting the course of any consultation. Such report shall be published and transmitted to Congress within 30 days of the conclusion of the consultation.

''(f) Nothing in this section shall be interpreted to set aside any of the limitations on the use of Federal funds set forth in the Bankruptcy Integrity and Accountability Act of 2010 or the amendments made by such Act. Nor shall any Federal funds be made available through the Federal Reserve System, including through the authority of the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343).

''§ 1404. Appointment of trustee

''In applying section 1104 to a case under this chapter, if the court orders the appointment of a trustee or an examiner, if the trustee or an examiner dies or resigns during the case or is removed under section 324, or if a trustee fails to qualify under section 322, the functional regulator, in consultation with the Financial Stability Oversight Council, shall submit a list of five disinterested persons that are qualified and willing to serve as trustees in the case and the United States trustee shall appoint, subject to the court's approval, one of such persons to serve as trustee in the case.

''§ 1405. Right to be heard

''(a) The functional regulator, the Financial Stability Oversight Council, the Federal Reserve, the Department of the Treasury, the Securities and Exchange Commission, and any domestic or foreign agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

''(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee may raise, and may appear and be heard on, any issue in a case under this chapter.

''§ 1406. Right to communicate

''The court is entitled to communicate directly with, or to request information or assistance directly from, the functional regulator, the Financial Stability Oversight

Council, the Board of Governors of the Federal Reserve System, the Department of the Treasury, or any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, subject to the rights of a party in interest to notice and participation.

"§ 1407. Exemption with respect to certain contracts or agreements

''(a) Subject to subsection (b)—

''(1) upon motion of the debtor, consented to by the Financial Stability Oversight Council—

''(A) the debtor and the estate shall be exempt from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561;

''(B) if the Financial Stability Oversight Council consents to the filing of such motion by the debtor, the Board shall inform the court of its reasons for consenting; and

''(C) the debtor may limit its motion, or the board may limit its consent, to exempt the debtor and the estate from the operation of section 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, or 561, or any combination thereof; and

''(2) if the Financial Stability Oversight Council does not consent to the filing of a motion by the debtor under paragraph (1), the debtor may file a motion to exempt the debtor and the estate from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561, or any combination thereof.

''(b) The court shall commence a hearing on a motion under subsection (a) not later than 5 days after the filing of the motion to determine whether to maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1) or, in the case of a motion under subsection (a)(2), grant the exemption. The court shall request the filing or briefs by the functional regulator and the Financial Stability Oversight Council. The court shall decide the motion not later than 5 days after commencing such hearing unless—

''(1) the parties in interest consent to a extension for a specific period of time; or

''(2) except with respect to an exemption from the operation of section 559, the court sua sponte extends for 5 additional days the period for decision if such extension would be in the interests of justice or is required by compelling circumstances.

''(c) The court shall maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1), or, in the case of a motion under subsection (a)(2), grant the exemption only upon showing of good cause. In determining whether good cause has been shown, the court shall balance the interests of both debtor and creditors while attempting to preserve the debtor's assets for repayment and reorganization of the debtors obligations, or to provide for a more orderly liquidation.

''(d) For purposes of timing under section 562 of this title, if a motion is filed under subsection (a)(1) or if a motion is granted under subsection (a)(2), the date or dates of liquidation, termination, or acceleration shall be measured from the earlier of—

''(1) the actual date or dates of liquidation, termination, or acceleration; or

''(2) the date on which a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant files a notice with the court that it would have liquidated, terminated, or accelerated a contract or agreement covered by section 562 of this title had a stay under this section not been in place.

''(e) The provisions of this section shall apply only with respect to contracts and agreements covered by this section entered into on or after the date of enactment of this chapter.

"§ 1408. Conversion or dismissal

''In applying section 1112 to a case under this chapter, the debtor may convert a case under this chapter to a case under chapter 7 of this title if the debtor may be a debtor under such chapter unless the debtor is not a debtor in possession.'', and

(2) by amending the table of chapters of such title by adding at the end the following:

''14. Adjustment to the Debts of a Non-Bank Financial Institution .. 1401''.

SA 3833. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _. SHAREHOLDER REGISTRATION THRESHOLD.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 12.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 781(g)) is amended—

(A) in paragraph (1)—

(i) by striking subparagraphs (A) and (B) and inserting the following:

''(A) in the case of an issuer that is a bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 2000 persons or more; and

''(B) in the case of an issuer that is not a bank or bank holding company, 500 persons or more,''; and

(ii) by striking ''commerce shall'' and inserting ''commerce shall, not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by''; and

(B) in paragraph (4), by striking ''three hundred'' and inserting ''300 persons, or, in the case of a bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1200''.

(2) SECTION 15.—Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended, in the third sentence, by striking ''three hundred'' and inserting ''300 persons, or, in the case of bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1200''.

(b) STUDY OF REGISTRATION THRESHOLDS.—

(1) STUDY.—

(A) ANALYSIS REQUIRED.—The Chief Economist and Director of the Division of Corporation Finance of the Commission shall jointly conduct a study, including a cost-benefit analysis, of shareholder registration thresholds.

(B) COSTS AND BENEFITS.—The cost-benefit analysis under subparagraph (A) shall take into account—

(i) the incremental benefits to investors of the increased disclosure that results from registration;

(ii) the incremental costs to issuers associated with registration and reporting requirements; and

(iii) the incremental administrative costs to the Commission associated with different thresholds.

(C) THRESHOLDS.—The cost-benefit analysis under subparagraph (A) shall evaluate whether it is advisable to—

(i) increase the asset threshold;

(ii) index the asset threshold to a measure of inflation;

(iii) increase the shareholder threshold;

(iv) change the shareholder threshold to be based on the number of beneficial owners; and

(v) create new thresholds based on other criteria.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Chief Economist and the Director of the Division of Corporation Finance of the Commission shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes—

(A) the findings of the study required under paragraph (1); and

(B) recommendations for statutory changes to improve the shareholder registration thresholds.

(c) RULEMAKING.—Not later than one year after the date of enactment of this Act, the Commission shall issue final regulations to implement this section and the amendments made by this section.

SA 3834. Mr. CORKER (for himself, Mr. GREGG, Mr. ISAKSON, and Mr. LEMIEUX) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1045, strike line 12 and all that follows through ''**SEC. 942.**'' on page 1052, line 3, and insert the following:

(b) STUDY ON RISK RETENTION.—

(1) STUDY.—

(A) IN GENERAL.—The Board of Governors, in coordination and consultation with the Comptroller of the Currency, the Corporation, the Federal Housing Finance Agency, and the Commission, shall conduct a study of the asset-backed securitization process.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Board of Governors shall evaluate—

(i) the separate and combined impact of—

(I) requiring loan originators or securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party; including—

(aa) whether existing risk retention requirements such as contractual representations and warranties, and statutory and regulatory underwriting and consumer protection requirements are sufficient to ensure the long-term accountability of originators for loans they originate; and

(bb) methodologies for establishing additional statutory credit risk retention requirements;

(II) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board, as well as any other statements issued before or after the date of enactment of this section the Federal banking agencies determine to be relevant;

(ii) the impact of the factors described under subsection (i) of this section on—

(I) different classes of assets, such as residential mortgages, commercial mortgages, commercial loans, auto loans, and other classes of assets;

(II) loan originators;

(III) securitizers;

(IV) access of consumers and businesses to credit on reasonable terms.

(2) REPORT.—Not later than 18 months after the date of enactment of this section, the Board of Governors shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).

SEC. 942. RESIDENTIAL MORTGAGE UNDERWRITING STANDARDS.

(a) STANDARDS ESTABLISHED.—Notwithstanding any other provision of this Act or any other provision of Federal, State, or local law, the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, shall jointly establish specific minimum standards for mortgage underwriting, including—

(1) a requirement that the mortgagee verify and document the income and assets relied upon to qualify the mortgagor on the residential mortgage, including the previous employment and credit history of the mortgagor;

(2) a down payment requirement that—

(A) is equal to not less than 5 percent of the purchase price of the property securing the residential mortgage; and

(B) in the case of a first lien residential mortgage loan with an initial loan to value ratio that is more than 80 percent and not more than 95 percent, includes a requirement for credit enhancements, as defined by the Federal banking agencies, until the loan to value ratio of the residential mortgage loan amortizes to a value that is less than 80 percent of the purchase price;

(3) a method for determining the ability of the mortgagor to repay the residential mortgage that is based on factors including—

(A) all terms of the residential mortgage, including principal payments that fully amortize the balance of the residential mortgage over the term of the residential mortgage; and

(B) the debt to income ratio of the mortgagor; and

(4) any other specific standards the Federal banking agencies jointly determine are appropriate to ensure prudent underwriting of residential mortgages.

(b) UPDATES TO STANDARDS.—The Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development—

(1) shall review the standards established under this section not less frequently than every 5 years; and

(2) based on the review under paragraph (1), may revise the standards established under this section, as the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, determine to be necessary.

(c) COMPLIANCE.—It shall be a violation of Federal law—

(1) for any mortgage loan originator to fail to comply with the minimum standards for mortgage underwriting established under subsection (a) in originating a residential mortgage loan;

(2) for any company to maintain an extension of credit on a revolving basis to any person to fund a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan funded by such credit was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a); or

(3) for any company to purchase, fund by assignment, or guarantee a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a).

(d) IMPLEMENTATION.—

(1) REGULATIONS REQUIRED.—The Federal banking agencies, in consultation with the Federal Housing Finance Agency, shall issue regulations to implement subsections (a) and (c), which shall take effect not later than 270 days after the date of enactment of this Act.

(2) REPORT REQUIRED.—If the Federal banking agencies have not issued final regulations under subsections (a) and (c) before the date that is 270 days after the date of enactment of this Act, the Federal banking agencies shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that—

(A) explains why final regulations have not been issued under subsections (a) and (c); and

(B) provides a timeline for the issuance of final regulations under subsections (a) and (c).

(e) ENFORCEMENT.—Compliance with the rules issued under this section shall be enforced by—

(1) the primary financial regulatory agency of an entity, with respect to an entity subject to the jurisdiction of a primary financial regulatory agency, in accordance with the statutes governing the jurisdiction of the primary financial regulatory agency over the entity and as if the action of the primary financial regulatory agency were taken under such statutes; and

(2) the Bureau, with respect to a company that is not subject to the jurisdiction of a primary financial regulatory agency.

(f) RULE OF CONSTRUCTION.—Nothing in this section may be construed to permit the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation to make or guarantee a residential mortgage loan that does not meet the minimum underwriting standards established under this section.

(g) DEFINITIONS.—In this section, the following definitions shall apply:

(1) COMPANY.—The term ''company''—

(A) has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)); and

(B) includes a sole proprietorship.

(2) MORTGAGE LOAN ORIGINATOR.—The term ''mortgage loan originator'' means any company that takes residential mortgage loan applications and offers or negotiates terms of residential mortgage loans.

(3) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan''—

(A) means any extension of credit primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) does not include a mortgage loan for which mortgage insurance is provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration.

(4) EXTENSION OF CREDIT; DWELLING.—The terms ''extension of credit'' and ''dwelling'' shall have the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

SEC. 943.

SA 3835. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, between lines 4 and 5, insert the following:

(s) NO AUTHORITY OVER UNDERWRITING STANDARDS FOR RESIDENTIAL MORTGAGE LOANS.—

(1) RULE OF CONSTRUCTION.—Nothing in this title may be construed as conferring authority on the Bureau to exercise any rulemaking or other authority for matters pertaining to underwriting standards with respect to residential mortgage loans, except as otherwise authorized under section 1024.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term ''residential mortgage loan'' means any extension of credit primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) the terms ''credit'' and ''dwelling'' have the same meanings as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

SA 3836. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 61, after line 24, add the following:

SEC. 122. COUNCIL REVIEW OF MEMBER AGENCY RULES.

(a) IN GENERAL.—The Council shall conduct a review of each rule or regulation that a member agency intends to propose relating to capital, liquidity, or leverage requirements for, or restrictions on the activities of, an entity regulated by the member agency. The Council shall consider international regulatory rules in conducting a review under this subsection.

(b) PROCESS.—

(1) IN GENERAL.—Each member agency shall submit to the Council for a binding decision an advanced notice of proposed rulemaking and any other proposed or final rule or regulation that proposes changes to capital, liquidity, or leverage requirements or activity restrictions for a financial company that is subject to regulation by the member agency.

(2) STANDARD FOR REVIEW.—In making a determination under this subsection, the members of the Council shall consider the safety and soundness of financial institutions and the stability of the financial system of the United States.

(c) TIMING.—Not later than 60 days after the date on which the Council receives a notice under subsection (b), the Council shall make a determination of whether to approve the issuance of the proposed rule or regulation that is the subject of the notice.

(d) APPROVAL REQUIRED.—No rule or regulation described in subsection (b) may become effective or enforceable, unless approved by the Council under this section.

(e) PUBLIC NOTICE.—The Council shall make public any notice of proposed rulemaking or other notice of a rule or regulation submitted by a member agency under this section.

SA 3837. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1236, line 4 strike ''(3)'' and insert the following:

''(3) FFIEC REVIEW OF BUREAU REGULATIONS.—The Federal Financial Institutions Examination Council shall review each regulation prescribed by the Bureau prior to its effective date, and unless approved by the Federal Financial Institutions Examination Council, by majority vote, such regulation shall not become effective.

''(4)''.

SA 3838. Mr. BROWN of Massachusetts (for himself, Mrs. SHAHEEN, and Mr. GREGG) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 295, between lines 19 and 20, insert the following:

(s) TREATMENT OF CERTAIN NONBANK FINANCIAL COMPANIES NOT SUBJECT TO ORDERLY LIQUIDATION.—

(1) IN GENERAL.—Subsections (n) and (o) shall not apply to any nonbank financial company that is subject to liquidation or rehabilitation under State law, unless such company—

(A) is determined to be a nonbank financial company supervised by the Board of Governors pursuant to section 113; or

(B) is determined by the Corporation to have benefitted financially from the orderly liquidation of a covered financial company and the use of the Fund under this title by receiving payments or credit pursuant to subsection (b)(4), (d)(4), or (h)(5)(E).

(2) EXCLUSION OF ASSETS.—Any assets of a nonbank financial company described in paragraph (1) shall be excluded for purposes of calculating a financial company's total consolidated assets under subsection (o).

SA 3839. Mr. MCCAIN (for himself, Mrs. SHAHEEN, Mr. GREGG, Mr. BENNETT, Mr. CRAPO, and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE XIII—ENHANCED REGULATION OF GOVERNMENT-SPONSORED ENTERPRISES

Subtitle A—GSE Bailout Elimination and Taxpayer Protection

SECTION 1311. SHORT TITLE.

This subtitle may be cited as the ''GSE Bailout Elimination and Taxpayer Protection Act''.

SEC. 1312. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CHARTER.—The term ''charter'' means—

(A) with respect to the Federal National Mortgage Association, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); and

(B) with respect to the Federal Home Loan Mortgage Corporation, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).

(2) DIRECTOR.—The term ''Director'' means the Director of the Federal Housing Finance Agency.

(3) ENTERPRISE.—The term ''enterprise'' means—

(A) the Federal National Mortgage Association; and

(B) the Federal Home Loan Mortgage Corporation.

(4) GUARANTEE.—The term ''guarantee'' means, with respect to an enterprise, the credit support of the enterprise that is provided by the Federal Government through its charter as a government-sponsored enterprise.

SEC. 1313. TERMINATION OF CURRENT CONSERVATORSHIP.

(a) IN GENERAL.—Upon the expiration of the period referred to in subsection (b), the Director of the Federal Housing Finance Agency shall determine, with respect to each enterprise, if the enterprise is financially viable at that time and—

(1) if the Director determines that the enterprise is financially viable, immediately take all actions necessary to terminate the conservatorship for the enterprise that is in effect pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617); or

(2) if the Director determines that the enterprise is not financially viable, immediately appoint the Federal Housing Finance Agency as receiver under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and carry out such receivership under the authority of such section.

(b) TIMING.—The period referred to in this subsection is, with respect to an enterprise—

(1) except as provided in paragraph (2), the 24-month beginning upon the date of the enactment of this Act; or

(2) if the Director determines before the expiration of the period referred to in paragraph (1) that the financial markets would be adversely affected without the extension of such period under this paragraph with respect to that enterprise, and upon making such determination notifies the Congress in writing of such determination, the 30-month period beginning upon the date of the enactment of this Act.

(c) FINANCIAL VIABILITY.—The Director may not determine that an enterprise is financially viable for purposes of subsection (a) if the Director determines that any of the conditions for receivership set forth in paragraph (3) or (4) of section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)) exists at the time with respect to the enterprise.

SEC. 1314. LIMITATION OF ENTERPRISE AUTHORITY UPON EMERGENCE FROM CONSERVATORSHIP.

(a) REVISED AUTHORITY.—Upon the expiration of the period referred to in section 1113(b), if the Director makes the determination under section 1113(a)(1), the following provisions shall take effect:

(1) REPEAL OF HOUSING GOALS.—

(A) REPEAL.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by striking sections 1331 through 1336 (12 U.S.C. 4561–6).

(B) CONFORMING AMENDMENTS.—Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended—

(i) in section 1303(28) (12 U.S.C. 4502(28)), by striking ''and, for the purposes'' and all that follows through ''designated disaster areas'';

(ii) in section 1324(b)(1)(A) (12 U.S.C. 4544(b)(1)(A))—

(I) by striking clauses (i), (ii), and (iv);

(II) in clause (iii), by inserting ''and'' after the semicolon at the end; and

(III) by redesignating clauses (iii) and (v) as clauses (i) and (ii), respectively;

(iii) in section 1338(c)(10) (12 U.S.C. 4568(c)(10)), by striking subparagraph (E);

(iv) in section 1339(h) (12 U.S.C. 4569), by striking paragraph (7);

(v) in section 1341 (12 U.S.C. 4581)—

(I) in subsection (a)—

(aa) in paragraph (1), by inserting ''or'' after the semicolon at the end;

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

(cc) by striking paragraphs (3) and (4); and

(II) in subsection (b)(2)—

(aa) in subparagraph (A), by inserting ''or'' after the semicolon at the end;

(bb) by striking subparagraphs (B) and (C); and

(cc) by redesignating subparagraph (D) as subparagraph (B);

(vi) in section 1345(a) (12 U.S.C. 4585(a))—

(I) in paragraph (1), by inserting ''or'' after the semicolon at the end;

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

(III) by striking paragraphs (3) and (4); and

(vii) in section 1371(a)(2) (12 U.S.C. 4631(a)(2))—

(I) by striking ''with any housing goal established under subpart B of part 2 of subtitle A of this title,''; and

(II) by striking ''section 1336 or''.

(2) PORTFOLIO LIMITATIONS.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended by adding at the end the following new section:

''SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF ENTERPRISES.

''(a) RESTRICTION.—No enterprise shall own, as of any applicable date in this subsection or thereafter, mortgage assets in excess of—

''(1) upon the expiration of the period referred to in section 1113(b) of the GSE Bailout Elimination and Taxpayer Protection Act or thereafter, 95 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of the previous year, provided, that in no event shall the regulated entity be required under this paragraph to own less than $250,000,000,000 in mortgage assets;

''(2) upon the expiration of the 1-year period that begins on the date described in paragraph (1) or thereafter, 75 percent of the aggregate amount of mortgage assets that the regulated entity owned in section 1113(b) of the GSE Bailout Elimination and Taxpayer Protection Act, provided, that in no event shall the regulated entity be required under this paragraph to own less than $250,000,000,000 in mortgage assets;

''(3) upon the expiration of the 2-year period that begins on the date described in paragraph (1) or thereafter, 75 percent of the aggregate amount of mortgage assets that the regulated entity owned upon the expiration of the 1-year period that begins on the date described in paragraph (1), provided, that in no event shall the regulated entity be required under this paragraph to own less than $250,000,000,000 in mortgage assets; and

''(4) upon the expiration of the 3-year period that begins on the date described in paragraph (1), $250,000,000,000.

''(b) DEFINITION OF MORTGAGE ASSETS.—For purposes of this section, the term 'mortgage assets' means, with respect to an enterprise, assets of such enterprise consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such enterprise in accordance with generally accepted accounting principles in effect in the United States as of September 7, 2008 (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time; and without giving any effect to any change that may be made after September 7, 2008, in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).''.

(3) INCREASE IN MINIMUM CAPITAL REQUIREMENT.—Section 1362 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4612), as amended by section 1111 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is amended—

(A) in subsection (a), by striking ''For purposes of this subtitle, the minimum capital level for each enterprise shall be'' and inserting ''The minimum capital level established under subsection (g) for each enterprise may not be lower than'';

(B) in subsection (c)—

(i) by striking ''subsections (a) and'' and inserting ''subsection'';

(ii) by striking ''regulated entities'' the first place such term appears and inserting ''Federal Home Loan Banks'';

(iii) by striking ''for the enterprises,'';

(iv) by striking '', or for both the enterprises and the banks,'';

(v) by striking ''the level specified in subsection (a) for the enterprises or''; and

(vi) by striking ''the regulated entities operate'' and inserting ''such banks operate'';

(C) in subsection (d)(1)—

(i) by striking ''subsections (a) and'' and inserting ''subsection''; and

(ii) by striking ''regulated entity'' each place such term appears and inserting ''Federal home loan bank'';

(D) in subsection (e), by striking ''regulated entity'' each place such term appears and inserting ''Federal home loan bank'';

(E) in subsection (f)—

(i) by striking ''the amount of core capital maintained by the enterprises,''; and

(ii) by striking ''regulated entities'' and inserting ''banks''; and

(F) by adding at the end the following new subsection:

''(g) ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—

''(1) IN GENERAL.—The Director shall cause the enterprises to achieve and maintain adequate capital by establishing minimum levels of capital for such the enterprises and by using such other methods as the Director deems appropriate.

''(2) AUTHORITY.—The Director shall have the authority to establish such minimum level of capital for an enterprise in excess of the level specified under subsection (a) as the Director, in the Director's discretion, deems to be necessary or appropriate in light of the particular circumstances of the enterprise.

''(h) FAILURE TO MAINTAIN REVISED MINIMUM CAPITAL LEVELS.—

''(1) UNSAFE AND UNSOUND PRACTICE OR CONDITION.—Failure of a enterprise to maintain capital at or above its minimum level as established pursuant to subsection (g) of this section may be deemed by the Director, in his discretion, to constitute an unsafe and unsound practice or condition within the meaning of this title.

''(2) DIRECTIVE TO ACHIEVE CAPITAL LEVEL.—

''(A) AUTHORITY.—In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Director may issue a directive to an enterprise that fails to maintain capital at or above its required level as established pursuant to subsection (g) of this section.

''(B) PLAN.—Such directive may require the enterprise to submit and adhere to a plan acceptable to the Director describing the means and timing by which the enterprise shall achieve its required capital level.

''(C) ENFORCEMENT.—Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of subtitle C of this title to the same extent as an effective and outstanding order issued pursuant to subtitle C of this title which has become final.

''(3) ADHERENCE TO PLAN.—

''(A) CONSIDERATION.—The Director may consider such enterprise's progress in adhering to any plan required under this subsection whenever such enterprise seeks the requisite approval of the Director for any proposal which would divert earnings, diminish capital, or otherwise impede such enterprise's progress in achieving its minimum capital level.

''(B) DENIAL.—The Director may deny such approval where it determines that such proposal would adversely affect the ability of the enterprise to comply with such plan.''.

(4) REPEAL OF INCREASES TO CONFORMING LOAN LIMITS.—

(A) REPEAL OF TEMPORARY INCREASES.—

(i) CONTINUING APPROPRIATIONS RESOLUTION, 2010.—Section 167 of the Continuing Appropriations Resolution, 2010 (as added by section 104 of division B of Public Law 111–88; 123 Stat. 2973) is hereby repealed.

(ii) AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.—Section 1203 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 225) is hereby repealed.

(iii) ECONOMIC STIMULUS ACT OF 2008.—Section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 619) is hereby repealed.

(B) REPEAL OF GENERAL LIMIT AND PERMANENT HIGH-COST AREA INCREASE.—Paragraph (2) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and paragraph (2) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) are each amended to read as such sections were in effect immediately before the enactment of the Housing and Economic Recovery Act of 2008 (Public Law 110–289).

(C) REPEAL OF NEW HOUSING PRICE INDEX.—Section 1322 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as added by section 1124(d) of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is hereby repealed.

(D) REPEAL.—Section 1124 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is hereby repealed.

(E) ESTABLISHMENT OF CONFORMING LOAN LIMIT.—For the year in which the expiration of the period referred to in section 1113(b) occurs, the limitations governing the maximum original principal obligation of conventional mortgages that may be purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, referred to in section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), respectively, shall be considered to be—

(i) $417,000 for a mortgage secured by a single-family residence,

(ii) $533,850 for a mortgage secured by a 2-family residence,

(iii) $645,300 for a mortgage secured by a 3-family residence, and

(iv) $801,950 for a mortgage secured by a 4-family residence,

and such limits shall be adjusted effective each January 1 thereafter in accordance with such sections 302(b)(2) and 305(a)(2).

(F) PROHIBITION OF PURCHASE OF MORTGAGES EXCEEDING MEDIAN AREA HOME PRICE.—

(i) FANNIE MAE.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by adding at the end the following new sentence: ''Notwithstanding any other provision of this title, the corporation may not purchase any mortgage asset for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.''.

(ii) FREDDIE MAC.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by adding at the end the following new sentence: ''Notwithstanding any other provision of this title, the Corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.''.

(5) REQUIREMENT OF MINIMUM DOWN PAYMENT FOR MORTGAGES PURCHASED.—

(A) FANNIE MAE.—Subsection (b) of section 302 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)) is amended by adding at the end the following new paragraph:

''(7) Notwithstanding any other provision of this Act, the corporation may not newly purchase any mortgage asset, unless the mortgagor has paid, in cash or its equivalent on account of the property securing repayment such mortgage, in accordance with regulations issued by the Director of the Federal Housing Finance Agency, not less than—

''(A) for any mortgage purchased during the 12-month period beginning upon the expiration of the period referred to in section 1113(b) of the GSE Bailout Elimination and Taxpayer Protection Act, 5 percent of the appraised value of the property;

''(B) for any mortgage purchased during the 12-month period beginning upon the expiration of the 12-month period referred to in subparagraph (A) of this paragraph, 7.5 percent of the appraised value of the property; and

''(C) for any mortgage purchased during the 12-month period beginning upon the expiration of the 12-month period referred to in subparagraph (B) of this paragraph, 10 percent of the appraised value of the property.''.

(B) FREDDIE MAC.—Subsection (a) of section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)) is amended by adding at the end the following new paragraph:

''(6) Notwithstanding any other provision of this Act, the Corporation may not newly purchase any mortgage asset, unless the mortgagor has paid, in cash or its equivalent on account of the property securing repayment such mortgage, in accordance with regulations issued by the Director of the Federal Housing Finance Agency, not less than—

''(A) for any mortgage purchased during the 12-month period beginning upon the expiration of the period referred to in section 1113(b) of the GSE Bailout Elimination and Taxpayer Protection Act, 5 percent of the appraised value of the property;

''(B) for any mortgage purchased during the 12-month period beginning upon the expiration of the 12-month period referred to in subparagraph (A) of this paragraph, 7.5 percent of the appraised value of the property; and

''(C) for any mortgage purchased during the 12-month period beginning upon the expiration of the 12-month period referred to in subparagraph (B) of this paragraph, 10 percent of the appraised value of the property.''.

(6) MINIMUM PRUDENT UNDERWRITING STANDARDS.—The Federal Housing Finance Agency shall, not later than 6 months after the date of enactment of this Act, issue regulations specifying minimum prudent underwriting standards for residential mortgage loans eligible for purchase by an enterprise, which regulations shall include minimum requirements for—

(A) verification and documentation of income and assets relied upon to qualify the obligor on the loan;

(B) determination of the ability of the obligor to repay, based on all terms of the loan, including principal payments that fully amortize the balance over the term of the loan; and

(C) any other standards that the Federal Housing Finance Agency determines appropriate to ensure prudent underwriting and which effect the safety and soundness of the regulated entities.

(7) REQUIREMENT TO PAY STATE AND LOCAL TAXES.—

(A) FANNIE MAE.—Paragraph (2) of section 309(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(c)(2)) is amended—

(i) by striking ''shall be exempt from'' and inserting ''shall be subject to''; and

(ii) by striking ''except that any'' and inserting ''and any''.

(B) FREDDIE MAC.—Section 303(e) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(e)) is amended—

(i) by striking ''shall be exempt from'' and inserting ''shall be subject to''; and

(ii) by striking ''except that any'' and inserting ''and any''.

(8) REPEALS RELATING TO REGISTRATION OF SECURITIES.—

(A) FANNIE MAE.—

(i) MORTGAGE-BACKED SECURITIES.—Section 304(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(d)) is amended by striking the fourth sentence.

(ii) SUBORDINATE OBLIGATIONS.—Section 304(e) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(e)) is amended by striking the fourth sentence.

(B) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by striking subsection (g).

(9) RECOUPMENT OF COSTS FOR FEDERAL GUARANTEE.—

(A) ASSESSMENTS.—The Director of the Federal Housing Finance Agency shall establish and collect from each enterprise assessments in the amount determined under subparagraph (B). In determining the method and timing for making such assessments, the Director shall take into consideration the determinations and conclusions of the study under subsection (b) of this section.

(B) DETERMINATION OF COSTS OF GUARANTEE.—Assessments under subparagraph (A) with respect to an enterprise shall be in such amount as the Director determines necessary to recoup to the Federal Government the full value of the benefit the enterprise receives from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprise, based upon the dollar value of such benefit in the market to such enterprise when not operating under conservatorship or receivership. To determine such amount, the Director shall establish a risk-based pricing mechanism as the Director considers appropriate, taking into consideration the determinations and conclusions of the study under subsection (b).

(C) TREATMENT OF RECOUPED AMOUNTS.—The Director shall cover into the general fund of the Treasury any amounts received from assessments made under this paragraph.

(b) GAO STUDY REGARDING RECOUPMENT OF COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The Comptroller General of the United States shall conduct a study to determine a risk-based pricing mechanism to accurately determine the value of the benefit the enterprises receive from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprises. Such study shall establish a dollar value of such benefit in the market to each enterprise when not operating under conservatorship or receivership, shall analyze various methods of the Federal Government assessing a charge for such value received (including methods involving an annual fee or a fee for each mortgage purchased or securitized), and shall make a recommendation of the best such method for assessing such charge. Not later than 12 months after the date of enactment of this Act, the Comptroller General shall submit to the Congress a report setting forth the determinations and conclusions of such study.

SEC. 1315. REQUIRED WIND DOWN OF OPERATIONS AND DISSOLUTION OF ENTERPRISE.

(a) APPLICABILITY.—This section shall apply to an enterprise upon the expiration of the 3-year period referred to in section 1113(b).

(b) REPEAL OF CHARTER.—Upon the applicability of this section to an enterprise, the charter for the enterprise is repealed and the enterprise shall have no authority to conduct new business under such charter, except that the provisions of such charter in effect immediately before such repeal shall continue to apply with respect to the rights and obligations of any holders of outstanding debt obligations and mortgage-backed securities of the enterprise.

(c) WIND DOWN.—Upon the applicability of this section to an enterprise, the Director and the Secretary of the Treasury shall jointly take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of an enterprise as an entity chartered by the United States Government over the duration of the 10-year period beginning upon the applicability of this section to the enterprise (pursuant to subsection (a)) in an orderly manner consistent with this subtitle and the ongoing obligations of the enterprise.

(d) DIVISION OF ASSETS AND LIABILITIES; AUTHORITY TO ESTABLISH HOLDING CORPORATION AND DISSOLUTION TRUST FUND.—The action and procedures required under subsection (c)—

(1) shall include the establishment and execution of plans to provide for an equitable division and distribution of assets and liabilities of the enterprise, including any liability of the enterprise to the United States Government or a Federal reserve bank that may continue after the end of the period described in subsection (a); and

(2) may provide for establishment of—

(A) a holding corporation organized under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring of the enterprise; and

(B) one or more trusts to which to transfer—

(i) remaining debt obligations of the enterprise, for the benefit of holders of such remaining obligations; or

(ii) remaining mortgages held for the purpose of backing mortgage-backed securities, for the benefit of holders of such remaining securities.

Subtitle B—Inspector General for Regulated Entities in Conservatorship

SEC. 1321. SPECIAL INSPECTOR GENERAL FOR THE CONSERVATORSHIP OF REGULATED ENTITIES.

(a) OFFICE OF INSPECTOR GENERAL.—There is established in the General Accountability Office the Office of the Special Inspector General for the Conservatorship of Regulated Entities.

(b) APPOINTMENT OF INSPECTOR GENERAL.—

(1) LEADERSHIP.—The head of the Office established under subsection (a) shall be the Special Inspector General for the Conservatorship of Regulated Entities (in this section referred to as the ''Special Inspector General''), who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) APPOINTMENT.—The appointment of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) TIMING.—The nomination of an individual as Special Inspector General shall be made as soon as is practicable following the date of enactment of this Act, but not later than 30 days after that date of enactment.

(4) REMOVABLE FOR CAUSE.—The Special Inspector General shall be removable from office, in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(5) STATUS.—For purposes of section 7324 of title 5, United States Code, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) COMPENSATION.—The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) DUTIES.—

(1) IN GENERAL.—It shall be the duty of the Special Inspector General to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by regulated entities, so long as the entities remain in conservatorship under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617) (in this section referred to as ''regulated entities''), including by collecting and summarizing—

(A) a description of the categories of mortgage assets purchased or otherwise procured by regulated entities;

(B) an explanation of the reasons why the Director of the Federal Housing Finance Agency (in this section referred to as the ''Director'') deemed it necessary to purchase each such mortgage asset;

(C) a listing of each institution from which such mortgage assets were purchased;

(D) a current estimate of the total amount of mortgage assets purchased since the date of appointment of the Federal Housing Finance Agency (in this section referred to as the ''Agency'') as conservator and the profit and loss, projected or realized, of each such mortgage asset;

(E) a description of the categories of mortgage loans modified by regulated entities;

(F) an explanation of the reasons why the Director deemed it necessary to modify each such mortgage loan;

(G) an explanation of the risk analysis procedures in place within regulated entities and the Council in respect to the modification process, as well as the loans accepted into the modification process;

(H) an explanation of the effect of continuing the affordable housing goals of the regulated entities on the financial standing of the regulated entities;

(I) the impact on any funding requested and accepted as a part of the Amended and Restated Senior Preferred Stock Purchase Agreement, dated September 26, 2008, amended May 6, 2009, amended December 24, 2009, and amended further at any point following the date of enactment of this Act;

(J) an assessment of whether the budgetary treatment of the assets and liabilities of the entities is correct, as it relates to the budget proposed by the President, as required under section 1105(a) of title 31, United States Code;

(K) an explanation of troubled assets owned by the regulated entities and acquired prior to the conservatorship; and

(L) a description of any changes to the structure of the regulated entities made by the Director and an explanation of how the changes will better enable the regulated entities to be successful during and post conservatorship.

(2) ADMINISTRATIVE AUTHORITY.—The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duty under paragraph (1).

(3) OTHER DUTIES.—In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall have the duties and responsibilities of inspectors general under the Inspector General Act of 1978, including sections 4(b)(1) and 6 of that Act.

(d) PERSONNEL, FACILITIES, AND OTHER RESOURCES.—

(1) AUTHORITY FOR OFFICERS AND EMPLOYEES.—The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(2) SERVICES.—The Special Inspector General may obtain services, as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–15 of the General Schedule by section 5332 of such title.

(3) CONTRACTS.—The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4) AGENCY COOPERATION.—

(A) REQUESTS.—Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, in so far as is practicable and not in contravention of any other provision of law, furnish such information or assistance to the Special Inspector General, or an authorized designee thereof.

(B) REPORTS OF UNREASONABLE DENIALS.—Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress, without delay.

(e) REPORTS.—

(1) QUARTERLY REPORTS TO CONGRESS.—Not later than 60 days after the confirmation of the Special Inspector General, and every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 120-day period ending on the date of such report. Each report shall include, for the period covered by such report, a detailed statement of all information collected under subsection (c)(1).

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive Order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(f) FUNDING.—Of the amounts made available to the Secretary, under section 118 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5228), $5,000,000 shall be available to the Special Inspector General to carry out this section, which amount shall remain available until expended.

(g) TERMINATION.—

(1) IN GENERAL.—The Office of the Special Inspector General shall terminate 90 days after the date of the emergence of all regulated entities from conservatorship and receivership under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617).

(2) FINAL REPORT.—The Office of the Special Inspector General shall prepare and submit a final report to Congress not later than the end of the 90-day period referred to in paragraph (1).

Subtitle C—Limiting Further Bailouts of Fannie Mae and Freddie Mac

SEC. 1331. SHORT TITLE.

This subtitle may be cited as the ''Ending Bailouts of Fannie Mae and Freddie Mac Act''.

SEC. 1332. REESTABLISHING THE MAXIMUM AGGREGATE AMOUNT PERMITTED TO BE PROVIDED BY THE TAXPAYERS TO FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(L) REESTABLISHMENT OF TAXPAYER FUNDING CAPS.—The Agency, as conservator, shall prevent a regulated entity from requesting or receiving any funds from the United States Department of the Treasury, as part of the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United State Department of the Treasury and the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, that exceeds a maximum aggregate amount of $200,000,000,000.''.

SEC. 1333. REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such entity in accordance with generally accepted accounting principles.''.

SEC. 1334. ENSURING CONGRESSIONAL REVIEW FOR AGREEMENTS INCREASING TAXPAYER RISK.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)), as amended by sections 1203 and 1204, is further amended by adding at the end the following new subparagraph:

''(N) AGREEMENTS.—

''(i) IN GENERAL.—The Agency, as conservator or receiver, may enter into agreements that are consistent with its appointment as conservator or receiver with the regulated entity and that expire prior to, or upon, the regulated entity's emergence from conservatorship or receivership provided—

''(I) the agreement does not expose the United States taxpayers to additional risk; and

''(II) the agreement was approved by Congress pursuant to clause (ii).

''(ii) PROCEDURE FOR CONGRESSIONAL APPROVAL.—

''(I) IN GENERAL.—Notwithstanding clause (i), the Agency may enter into, on an interim basis, an agreement, even if the agreement exposes the taxpayer to additional risk, including if such agreement exceeds the limitations established under subparagraphs (L) and (M), if such an agreement—

''(aa) is deemed necessary by the Agency, based upon the Agency's duties as conservator or receiver; and

''(bb) is approved by Congress through adoption of a concurrent resolution of approval, not more than 120 days after the later of—

''(AA) the signing of the agreement; or

''(BB) the date of enactment of the Ending Bailouts of Fannie Mae and Freddie Mac Act.

''(II) REQUIRED SUBMISSIONS FOR CONGRESSIONAL REVIEW.—During the 120-day period described under subclause (I), the Director shall submit to Congress—

''(aa) the text of the agreement;

''(bb) a certification and justification of how the agreement is consistent with the Agency's duties as conservator or receiver;

''(cc) budgetary projections demonstrating the cost to the taxpayer in a 1, 5, and 10-year window;

''(dd) independent risk analysis from the Government Accountability Office of the agreement, considering the risk to the short and long-term viability of the regulated entity and the United States taxpayer; and

''(ee) a time table for the expiration of the agreement.''.

Subtitle D—Fannie Mae and Freddie Mac in the Federal Budget

SEC. 1341. ON-BUDGET STATUS OF FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Notwithstanding any other provision of law, the receipts and disbursements, including the administrative expenses, of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the Budget of the United States Government as submitted by the President;

(2) the congressional budget;

(3) the Statutory Pay-As-You-Go Act of 2010; and

(4) the Balanced Budget and Emergency Deficit Control Act of 1985 (or any successor statute).

(b) EXPIRATION.—The budgetary treatment of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements under subsection (a) shall continue with respect to such entities until such entities are no longer under Federal conservatorship or receivership as authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1342. BUDGETARY TREATMENT OF FANNIE MAE AND FREDDIE MAC.

All costs to the Government of the activities of or under the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and any functional replacements or any modification of such entities shall be determined on a fair value basis.

SEC. 1343. FANNIE MAE AND FREDDIE MAC DEBT SUBJECT TO PUBLIC DEBT LIMIT.

(a) IN GENERAL.—For purposes of section 3101(b) of chapter 31 of title 31, United States Code, the face amount of obligations issued by the Federal National Mortgage Association and by the Federal Home Loan Mortgage Corporation or any functional replacements and outstanding shall be treated as issued by the United States Government under that section.

(b) TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT.—The limit on the obligation in section 3101(b) of title 31, United States Code, shall be increased by the face amount of obligations issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and outstanding on April 15, 2010.

(c) EXPIRATION.—

(1) OBLIGATIONS.—The obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements shall continue to be treated as issued by the United States Government with respect to such entities until such entities no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

(2) DEBT LIMIT.—Any temporary increase in the public debt limit authorized in subsection (b) with respect to the obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation shall be reversed with respect to such entities when Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1344. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) FAIR VALUE.—The term ''fair value'' shall have the same meaning as the definition of fair value outlined in Financial Accounting Standards No. 157, or any successor thereto, issued by the Financial Accounting Standards Board.

(2) FUNCTIONAL REPLACEMENTS.—The term ''functional replacements'' means any organization, agreement, or other arrangement that would perform the public functions of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(3) MODIFICATION.—

(A) IN GENERAL.—The term ''modification'' means any government action that alters the estimated fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements.

(B) COST.—The cost of a modification is the difference between the current estimate of the fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements and the estimate of the fair value of such activities as modified.

SA 3840. Mr. CARDIN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 977, line 19, strike ''The Securities'' and insert the following:

(a) IN GENERAL.—The Securities

On page 994, between lines 2 and 3, insert the following:

(b) PROTECTION FOR EMPLOYEES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—Section 1514A(a) of title 18, United States Code, is amended—

(1) by inserting ''or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c),'' after ''78*o*(d)),''; and

(2) by inserting ''or nationally recognized statistical rating organization'' after ''such company''.

SA 3841. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 977, line 19, strike ''The'' and insert ''(a) **SECURITIES EXCHANGE ACT OF 1934**.—The''.

On page 994, between lines 2 and 3, insert the following:

(b) SECTION 1514A OF TITLE 18, UNITED STATES CODE.—

(1) STATUTE OF LIMITATIONS; JURY TRIAL.—Section 1514A(b)(2) of title 18, United States Code, is amended—

(A) in subparagraph (D)—

(i) by striking ''90'' and inserting ''180''; and

(ii) by striking the period at the end and inserting '', or after the date on which the employee became aware of the violation.''; and

(B) by adding at the end the following:

''(E) JURY TRIAL.—A party to an action brought under paragraph (1)(B) shall be entitled to trial by jury.''.

(2) COMPENSATORY DAMAGES.—Section 1514A(c)(2)(C) of title 18, United States Code, is amended by inserting ''compensatory damages, including'' before ''compensation''.

(3) PRIVATE SECURITIES LITIGATION WITNESSES; NONENFORCEABILITY; INFORMATION.—Section 1514A of title 18, United States Code, is amended by adding at the end the following:

''(e) PRIVATE SECURITIES LITIGATION.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, an individual in the terms and conditions of employment because of any lawful act done by the individual in providing information, or assisting in any investigation or judicial or administrative action, relating to a private securities litigation action under section 21F of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4).

''(f) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—

''(1) WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

''(2) PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph

(3), no predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

''(3) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.—An arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.''.

(4) UNDISCLOSED LIABILITIES.—Section 1514A(a)(1) of title 18, United States Code, is amended to read as follows:

''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, any provision of Federal law relating to fraud against shareholders, or any information which has not been disclosed to shareholders that relates to a potential liability of the company that, if incurred, could affect the value of shareholder investments, when the information or assistance is provided to or the investigation is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or''.

(5) TECHNICAL AND CONFORMING AMENDMENT.—Section 1514A(b)(1) of title 18, United States Code, is amended by inserting ''or (e)'' after ''subsection (a)''.

SA 3842. Mr. NELSON of Florida (for himself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 780, strike lines 1 through 3 and insert the following:

(B) in the matter following subsection (b)—

(i) by striking ''(but not'' and all that follows through ''insider trading)''; and

(ii) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

SA 3843. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 122. INCREASE IN DEPOSIT AND SHARE INSURANCE AMOUNTS.

(a) PERMANENT INCREASE IN DEPOSIT INSURANCE.—

(1) INSURANCE AMOUNT.—Section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) is amended by striking ''$100,000'' and inserting ''$250,000''.

(2) BORROWING AUTHORITY.—The Board of Directors of the Corporation may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 14(a) and 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a), 1825(c)).

(b) PERMANENT INCREASE IN SHARE INSURANCE.—

(1) INSURANCE AMOUNT.—Section 207(k)(5) of the Federal Credit Union Act (12 U.S.C. 1787(k)(5)) is amended by striking ''$100,000'' and inserting ''$250,000''.

(2) BORROWING AUTHORITY.—The National Credit Union Administration Board may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 203(d)(1) of the Federal Credit Union Act (12 U.S.C. 1783(d)(1)).

(c) REPEAL.—Section 136 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5241) is repealed, effective on the date of enactment of this Act.

SA 3844. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1565, after line 23, add the following:

TITLE XIII—CONGO CONFLICT MINERALS

SEC. 1301. SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

It is the sense of Congress that the exploitation and trade of columbite-tantalite, cassiterite, gold, and wolframite in the eastern Democratic Republic of Congo is helping to finance extreme levels of violence in the eastern Democratic Republic of Congo, particularly sexual and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302.

SEC. 1302. DISCLOSURE TO SECURITIES AND EXCHANGE COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by section 763 of this Act, is further amended by adding at the end the following new subsection:

''(o) DISCLOSURES TO COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Commission shall promulgate rules requiring any person described in paragraph (2)—

''(A) to disclose annually to the Commission in a report—

''(i) whether the columbite-tantalite, cassiterite, gold, or wolframite that was necessary as described in paragraph (2)(A)(ii) in the year for which such report is submitted originated or may have originated in the Democratic Republic of Congo or an adjoining country; and

''(ii) a description of the measures taken by the person, which may include an independent audit, to exercise due diligence on the source and chain of custody of such columbite-tantalite, cassiterite, gold, or wolframite, or derivatives of such minerals, in order to ensure that the activities of such person that involve such minerals or derivatives did not directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or an adjoining country; and

''(B) make the information disclosed under subparagraph (A) available to the public on the Internet website of the person.

''(2) PERSON DESCRIBED.—

''(A) IN GENERAL.—A person is described in this paragraph if—

''(i) the person is required to file reports to the Commission under subsection (a)(2); and

''(ii) columbite-tantalite, cassiterite, gold, or wolframite is necessary to the functionality or production of a product of such person.

''(B) DERIVATIVES.—For purposes of this paragraph, if a derivative of a mineral is necessary to the functionality or production of a product of a person, such mineral shall also be considered necessary to the functionality or production of a product of the person.

''(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President determines that such revision or waiver is in the public interest.

''(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall terminate on the date that is 5 years after the date of the enactment of this subsection.

''(B) EXTENSION BY SECRETARY OF STATE.—The date described in subparagraph (A) shall be extended by 1 year for each year in which the Secretary of State certifies that armed parties to the ongoing armed conflict in the Democratic Republic of Congo or adjoining countries continue to be directly involved and benefitting from commercial activity involving columbite-tantalite, cassiterite, gold, or wolframite.

''(5) ADJOINING COUNTRY DEFINED.—In this subsection, the term 'adjoining country', with respect to the Democratic Republic of Congo, means a country that shares an internationally recognized border with the Democratic Republic of Congo.''.

SEC. 1303. REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that includes the following:

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302, in promoting peace and security in the eastern Democratic Republic of Congo.

(2) A description of the problems, if any, encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(o).

(3) A description of the adverse impacts of carrying out the provisions of such section 13(o), if any, on communities in the eastern Democratic Republic of Congo.

(4) Recommendations for legislative or regulatory actions that can be taken—

(A) to improve the effectiveness of the provisions of such section 13(o) to promote peace and security in the eastern Democratic Republic of Congo;

(B) to resolve the problems described pursuant to paragraph (2), if any; and

(C) to mitigate the adverse impacts described pursuant paragraph (3), if any.

SA 3845. Mr. KAUFMAN (for himself and Mr. GRASSLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 728, between lines 3 and 4, insert the following:

SEC. 760. IMPROVED TRANSPARENCY.

(a) SECURITIES.—Section 11A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(a)(1)) is amended by adding at the end the following:

''(E) Promoting transparency of all markets for securities through dissemination of quotations and orders to all brokers, dealers, and investors, and minimizing conditions under which quotations and orders are hidden or selectively disseminated, will—

''(i) foster efficiency;

''(ii) enhance competition;

''(iii) increase the information available to brokers, dealers, and investors;

''(iv) facilitate the offsetting of investors' orders; and

''(v) contribute to best execution of such orders.''.

(b) COMMODITIES.—Section 3(b) of the Commodity Exchange Act (7 U.S.C. 5(b)) is amended—

(1) by striking ''and'' following ''customer assets;'';

(2) by striking the period at the end of the second sentence; and

(3) by adding at the end the following: ''; to promote transparency of all markets through dissemination of quotations and orders to all market participants and market professionals; and to minimize conditions under which quotations and orders are hidden or selectively disseminated. Furthering the purposes of this Act will foster efficiency, enhance competition, increase the information available to market participants, facilitate the offsetting of market participants' orders, and contribute to best execution of such orders.''.

SA 3846. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title III, add the following:

SEC. 333. DEPOSIT RESTRICTED QUALIFIED TUITION PROGRAMS.

(a) IN GENERAL.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

''(y) DEPOSIT RESTRICTED QUALIFIED TUITION PROGRAMS.—

''(1) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) DEPOSIT RESTRICTED QUALIFIED TUITION PROGRAM.—The term 'deposit restricted qualified tuition program' means a qualified tuition program in which—

''(i) the cash provided by a contributor to such a qualified tuition program may be invested only in deposits insured by the Corporation;

''(ii) the contributor may become a participant in the program by depositing funds through the program into an account at a depository institution participating in the program; and

''(iii) the program may include multiple depository institutions, subject to the requirements of section 529 of the Internal Revenue Code of 1986, as amended.

''(B) QUALIFIED TUITION PROGRAM.—The term 'qualified tuition program' has the same meaning as in section 529 of the Internal Revenue Code of 1986, as amended.

''(2) TREATMENT.—Notwithstanding any other provision of the law, the following provisions shall apply with respect to any deposit restricted qualified tuition program:

''(A) A deposit restricted qualified tuition program shall be deemed to be an 'identified banking product' (as defined in Section 206 of the Gramm-Leach-Bliley Act of 1999) for purposes of the Securities Exchange Act of 1934.

''(B) None of the following shall be treated as a security, as defined in section 2(a)(1) the Securities Act of 1933, section 3(a)(10) of the Securities Exchange Act of 1934, or section 2(a)(36) of the Investment Company Act of 1940:

''(i) The deposits of cash at an insured depository institution relating to a deposit restricted tuition program.

''(ii) Any certificate of deposit or other instrument of an insured depository institution evidencing any such deposit.

''(iii) The rights and obligations of participants in a deposit restricted qualified tuition program arising from section 529 of the Internal Revenue Code, as amended.

''(C) In no event shall a deposit restricted qualified tuition program, the State entity designated by statute to oversee such program, the administrator appointed to operate the program on behalf of the State or a participating depository institution, be deemed to be an issuer of a security or to be an investment company (as defined in section 3(a) of the Investment Company Act of 1940).''.

(b) BUDGET COMPLIANCE.—The budgetary effects of this section, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

SA 3847. Mr. DODD (for Mr. LEAHY (for himself and Mr. CORNYN)) proposed an amendment to the bill S. 3111, to establish the Commission on Freedom of Information Act Processing Delays; as follows:

On page 6, line 5, strike ''The Comptroller General of the United States'' and insert ''The Archivist of the United States''.

On page 7, strike lines 1 through 3, and insert the following:

(j) TRANSPARENCY.—All meetings of the Commission shall be open to the public, except that a meeting, or any portion of it, may be closed to the public if it concerns matters or information described in chapter 552b(c) of title 5, United States Code. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before the Commission.

SA 3848. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 122. CERTIFICATIONS BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall, not later than February 28, 2011, and annually thereafter, certify in writing to Congress that the risks to the financial stability of the United States that could arise from the material financial distress or failure of a financial company are sufficiently mitigated by actions authorized to be taken by the Council or the individual members of the Council, in order to ensure than no such financial company will be considered ''too big to fail''.

(b) INABILITY TO CERTIFY.—If the Secretary is unable to make a certification to Congress as required under subsection (a), the Secretary shall—

(1) inform Congress of the reasons for such inability; and

(2) make recommendations to Congress, to the members of the Council, and to the President that would, if implemented, enable the Secretary to provide such certification.

SA 3849. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. CREDIT CARD RATINGS.

(a) RESEARCH AND ANALYSIS.—Not later than 60 days after the date of enactment of this Act, the research unit established by the Director under section 1013(b) shall conduct a study of the credit card industry and the efficacy of establishing a rating system for credit cards, so that consumers are able to compare the terms of credit card accounts for purposes of comparing the level of safety and financial risk with respect to such accounts.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Director shall issue a report based on the study required in subsection (a), and shall determine, based on the report, whether establishing a

ratings system for credit cards would meaningfully improve the ability of consumers to compare the terms of credit card accounts.

(c) RULEMAKING.—If the Director determines, pursuant to subsection (b), that establishing a ratings system for credit cards would meaningfully improve the ability of consumers to compare the terms of credit card accounts, then not later than 12 months after the date of enactment of this Act, the Director shall issue final rules to establish and disclose to the public the ratings for credit card accounts. Such rules shall include consideration in such ratings of credit practices, including—

(1) terms of arbitration between the consumer and the credit card account holder;

(2) the imposition and amounts of fees;

(3) the ability of the consumer to opt out of a proposed change in the terms of the credit card agreement;

(4) the manner and methods in which materials and information are presented to consumers, and the degree of conspicuousness with which key terms of the agreement are presented;

(5) methods for the accrual of interest;

(6) reading level required to understand the terms of the agreement; and

(7) such other factors as the Director determines are appropriate with respect to such ratings.

(d) CONSIDERATION OF NHTSA PROGRAM.—In carrying out subsection (c), the Director shall consider establishing a 5-star ratings system similar to the New Car Assessment Program administered by the National Highway Traffic Safety Administration of the Department of Transportation.

SA 3850. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, insert between lines 6 and 7, insert the following:

(3) APPLICABILITY TO FANNIE MAE AND FREDDIE MAC.—Notwithstanding any other provision of law, the provisions of subsections (b) and (f) shall apply with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in the same manner and to the same extent as those provisions apply to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.

At the end of title II, add the following new section and designate accordingly:

SEC. ____.: APPLICABILITY TO FANNIE MAE AND FREDDIE MAC.—Notwithstanding any other provision of law, this title shall apply with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in the same manner and to the same extent as those provisions apply to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.

At the end of subtitle A of title I, add the following:

SEC. 122. ENHANCED TAXPAYER PROTECTION FROM FANNIE MAE AND FREDDIE MAC.

(a) REESTABLISHING THE MAXIMUM TAXPAYER EXPOSURE TO FANNIE MAE AND FREDDIE MAC.— Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding the following new subparagraph:

''(L) LIMITATION ON CERTAIN FUNDING.—The Agency, as conservator, shall prohibit the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association from receiving more than $200,000,000,000 through the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United States Department of the Treasury and the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.''.

(b) REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.—Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such entity in accordance with generally accepted accounting principles.''.

(c) AFFORDABLE HOUSING GOALS.—

REPEAL.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by striking sections 1331 through 1336 (12 U.S.C. 4561–6).

(2) CONFORMING AMENDMENTS.—Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended—

(A) in section 1303(28) (12 U.S.C. 4502(28)), by striking ''and, for the purposes'' and all that follows through ''designated disaster areas'';

(B) in section 1324(b)(1)(A) (12 U.S.C. 4544(b)(1)(A))—

(i) by striking clauses (i), (ii), and (iv);

(ii) in clause (iii), by inserting ''and'' after the semicolon at the end; and

(iii) by redesignating clauses (iii) and (v) as clauses (i) and (ii), respectively;

(C) in section 1338(c)(10) (12 U.S.C. 4568(c)(10)), by striking subparagraph (E);

(D) in section 1339(h) (12 U.S.C. 4569), by striking paragraph (7);

(E) in section 1341 (12 U.S.C. 4581)—

(i) in subsection (a)—

(I) in paragraph (1), by inserting ''or'' after the semicolon at the end;

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

(III) by striking paragraphs (3) and (4); and

(ii) in subsection (b)(2)—

(I) in subparagraph (A), by inserting ''or'' after the semicolon at the end;

(II) by striking subparagraphs (B) and (C); and

(III) by redesignating subparagraph (D) as subparagraph (B);

(F) in section 1345(a) (12 U.S.C. 4585(a))—

(i) in paragraph (1), by inserting ''or'' after the semicolon at the end;

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

(iii) by striking paragraphs (3) and (4); and

(G) in section 1371(a)(2) (12 U.S.C. 4631(a)(2))—

(i) by striking ''with any housing goal established under subpart B of part 2 of subtitle A of this title,''; and

(ii) by striking ''section 1336 or''.

SA 3851. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by REID for Mr. DODD (for himself and Mrs. LINCOLN) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, insert between lines 6 and 7, insert the following:

(3) APPLICABILITY TO FANNIE MAE AND FREDDIE MAC.—Notwithstanding any other provision of law, the provisions of subsections (b) through (f) shall apply with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in the same manner and to the same extent as those provisions apply to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.

At the end of title II, add the following new section and designate accordingly:

SEC. ____.:APPLICABILITY TO FANNIE MAE AND FREDDIE MAC.—Notwithstanding any other provision of law, this title shall apply will respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in the same manner and to the same extent as those provisions apply to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.

At the end of subtitle A of title I, add the following:

SEC. 122. ENHANCED TAXPAYER PROTECTION FROM FANNIE MAE AND FREDDIE MAC.

(a) REESTABLISHING THE MAXIMUM TAXPAYER EXPOSURE TO FANNIE MAE AND FREDDIE MAC.—Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding the following new subparagraph:

''(L) LIMITATION ON CERTAIN FUNDING.—The Agency, as conservator, shall prohibit the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association from receiving more than $200,000,000,000 through the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United States Department of the Treasury and the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.''.

(b) REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.—Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity

does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such entity in accordance with generally accepted accounting principles.''

SA 3852. Mr. DEMINT (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. BORDER FENCE COMPLETION.

(a) MINIMUM REQUIREMENTS.—Section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subparagraph (A), by adding at the end the following: ''Fencing that does not effectively restrain pedestrian traffic (such as vehicle barriers and virtual fencing) may not be used to meet the 700-mile fence requirement under this subparagraph.'';

(2) in subparagraph (B)—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(iii) not later than 1 year after the date of the enactment of the Restoring American Financial Stability Act of 2010, complete the construction of all the reinforced fencing and the installation of the related equipment described in subparagraph (A).''; and

(3) in subparagraph (C), by adding at the end the following:

''(iii) FUNDING NOT CONTINGENT ON CONSULTATION.—Amounts appropriated to carry out this paragraph may not be impounded or otherwise withheld for failure to fully comply with the consultation requirement under clause (i).''.

(b) REPORT.—Not later than 180 days after the date of the enactment of the Restoring American Financial Stability Act of 2010, the Secretary of Homeland Security shall submit a report to Congress that describes—

(1) the progress made in completing the reinforced fencing required under section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended by this section; and

(2) the plans for completing such fencing not later than 1 year after the date of the enactment of this Act.

SA 3853. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 92, strike lines 8 through 12 and insert the following:

(ii) liquidity requirements;

(iii) resolution plan and credit exposure report requirements; and

(iv) concentration limits.

On page 105, between lines 2 and 3, insert the following:

(i) LEVERAGE RATIO FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—

(1) AMENDMENT.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. LIMITS ON LEVERAGE.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) FINANCIAL COMPANY.—The term 'financial company' means any nonbank financial company, as that term is defined in section 102 of the Restoring American Financial Stability Act of 2010, that is supervised by the Board.

''(2) INCORPORATED TERMS.—The terms 'average total consolidated assets' and 'tier 1 capital' have the meanings given those terms in part 225 of title 12, Code of Federal Regulations, or any successor thereto.

''(b) LEVERAGE RATIO REQUIREMENTS FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—

''(1) LEVERAGE RATIO.—A bank holding company or financial company may not maintain tier 1 capital in an amount that is less than 6 percent of the average total consolidated assets of the bank holding company or financial holding company.

''(2) BALANCE SHEET LEVERAGE RATIO.—A bank holding company or financial company may not maintain less than 6 percent of tier 1 capital for all outstanding balance sheet liabilities, as required to be recorded under section 13(o) of the Securities Exchange Act of 1934.

''(c) EXEMPTIONS.—

''(1) IN GENERAL.—The Board may adjust the leverage ratio requirements under subsection (b) for any class of institutions, based upon the size or activity of such class of institutions. No adjustment made under this paragraph may allow an institution to carry less capital than is required under subsection (b).

''(2) INTERNATIONAL AGREEMENTS.—Consistent with this subsection, the Board may adjust the leverage ratio requirements under subsection (b), as necessary to harmonize such ratios with official international agreements regarding capital standards, if the Board determines that the capital standards under such international agreements are commensurate with the credit, market, operational, or other risks posed by the bank holding companies or financial companies to which such international agreements apply.

''(3) TEMPORARY EMERGENCY EXEMPTION.—

''(A) IN GENERAL.—The appropriate Federal banking agency may, in a manner consistent with this subsection, grant any bank holding company a temporary emergency exemption from the leverage ratio requirements under subsection (b), if the appropriate Federal banking agency determines such an exemption is necessary to prevent an imminent threat to the financial stability of the United States.

''(B) PUBLICATION.—

''(i) PUBLICATION REQUIRED.—The appropriate Federal banking agency shall publish a notice of any exemption granted under this paragraph in the Federal Register within a reasonable period after granting the exemption, and in no case later than 90 days after the date on which the exemption is granted.

''(ii) CONTENTS.—The notice under clause (i) shall include—

''(I) the name of the bank holding company or financial company that is granted an exemption;

''(II) the reason for the exemption; and

''(III) a plan detailing the manner by which the bank holding company will be brought into compliance with subsection (b).

''(d) LEVERAGE RATIO REQUIREMENTS FOR OPERATING SUBSIDIARIES OF BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—Notwithstanding any other provision of law applicable to insured depository institutions, not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, the Board shall promulgate regulations establishing leverage ratio requirements under subsection (b) for the operating subsidiaries of bank holding companies and financial companies.

''(e) PROMPT CORRECTIVE ACTION.—

''(1) AUTHORITIES.—The Board shall require a bank holding company or financial company that violates subsection (b) to comply with the leverage ratio requirements under subsection (b) by—

''(A) selling or otherwise transferring assets or off-balance sheet items to unaffiliated firms;

''(B) terminating 1 or more activities of the bank holding company or financial company; or

''(C) imposing conditions on the manner in which the bank holding company or financial company conducts an activity of the bank holding company or financial company.

''(2) CORRECTIVE ACTION PLAN.—Not later than 60 days after the Board determines that a bank holding company or financial holding company has violated subsection (b), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a plan detailing the manner by which the bank holding company or financial company will be brought into compliance with subsection (b).

''(3) REPORTS TO CONGRESS.—

''(A) WRITTEN REPORTS.—At the end of each 60-day period following the date on which the Board submits a plan under paragraph (2) during which a bank holding company or financial company remains in violation of subsection (b), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the compliance of the bank holding company or financial holding company with the plan.

''(B) TESTIMONY.—At the end of each 120-day period following the date on which the Board submits a plan under paragraph (2) during which a bank holding company or financial company remains in violation of subsection (b), the Board shall testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives with respect to the compliance of the bank holding company or financial holding company with the plan.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

On page 497, line 14, strike ''**SEC. 13**'' and insert ''**SEC. 14**''.

On page 976, between lines 4 and 5, insert the following:

SEC. 919C. FINANCIAL REPORTING.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(o) STANDARD BALANCE SHEET CALCULATION FOR REPORTS.—

''(1) STANDARD ESTABLISHED.—Not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission, or a standard setter designated by and under the oversight of the Commission, shall establish a standard requiring each that each issuer that is required to submit reports to the Commission under this section record all assets and liabilities of the issuer on the balance sheet of the issuer.

''(2) CONTENTS.—The standard established under paragraph (1) shall require that—

''(A) the recorded amount of assets and liabilities reflect a reasonable assessment by the issuer of the most likely outcomes with respect to the amount of assets and liabilities, given information available at the time of the report;

''(B) each issuer record any financing of assets for which the issuer has more than minimal economic risks or rewards; and

''(C) if an issuer cannot determine the amount of a particular liability, the issuer may exclude that liability from the balance sheet of the issuer only if the issuer discloses an explanation of—

''(i) the nature of the liability and purpose for incurring the liability;

''(ii) the most likely loss and the maximum loss the issuer may incur from the liability;

''(iii) whether any other person has recourse against the issuer with respect to the liability and, if so, the conditions under which such recourse may occur; and

''(iv) whether the issuer has any continuing involvement with an asset financed by the liability or any beneficial interest in the liability.

''(3) COMPLIANCE.—The Commission shall issue rules to ensure compliance with this subsection that allow for enforcement by the Commission and civil liability under this title and the Securities Act of 1933.''.

SA 3854. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1187, line 9, strike ''effective.'' and insert the following: ''effective.

Subtitle K—Additional Amendments to the Securities Laws

SEC. 992. STRENGTHENING ENFORCEMENT BY THE COMMISSION.

(a) NATIONWIDE SERVICE OF SUBPOENAS.—

(1) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.''.

(3) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.''.

(4) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence.''.

(b) AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

''(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

''(A) such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

''(B) such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be $75,000 for a natural person or $375,000 for any other person, if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $150,000 for a natural person or $725,000 for any other person, if—

''(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

''(ii) such act or omission directly or indirectly resulted in—

''(I) substantial losses or created a significant risk of substantial losses to other persons; or

''(II) substantial pecuniary gain to the person who committed the act or omission.

''(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.''.

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(A) by striking the matter following paragraph (4);

(B) in the matter preceding paragraph (1), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(C) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(E) by adding at the end the following:

''(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

''(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(3) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(A) by striking the matter following subparagraph (C);

(B) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest, and'';

(C) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(E) by adding at the end the following:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(4) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(A) by striking the matter following subparagraph (D);

(B) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(C) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(E) by adding at the end the following new subparagraph:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(c) FORMERLY ASSOCIATED PERSONS.—

(1) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking ''any member or employee'' and inserting ''any person who is, or at the time of the alleged violation or abuse was, a member or employee''.

(2) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)) is amended—

(A) in paragraph (1)(C), by striking ''any person associated, or seeking to become associated,'' and inserting ''any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting '', seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'' after ''any person associated''; and

(ii) in subparagraph (B), by inserting '', seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'' after ''any person associated''.

(3) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting '', or, as to any act or practice, or omission to act, while associated with a member, formerly associated'' after ''member or a person associated''.

(4) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first sentence, by inserting ''or, as to any act or practice, or omission to act, while a participant, was a participant,'' after ''in which such person is a participant,''.

(5) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(A) by striking ''any officer or director'' and inserting ''any person who is, or at the time of the alleged misconduct was, an officer or director''; and

(B) by striking ''such officer or director'' and inserting ''such person''.

(6) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(A) by striking ''a person serving or acting'' and inserting ''a person who is, or at the time of the alleged misconduct was, serving or acting''; and

(B) by striking ''such person so serves or acts'' and inserting ''such person so serves or acts, or at the time of the alleged misconduct, so served or acted''.

(7) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following:

''(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of sections 3(c), 101(c), 105, and 107(c) and the rules of the Board and Commission issued thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except that—

''(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and

''(ii) the authority to commence a disciplinary proceeding under section 105(c)(1), or impose sanctions under section 105(c)(4), against such person shall apply only with respect to—

''(I) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

''(II) non-cooperation, as described in section 105(b)(3), with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.''.

(B) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking ''or a person associated with such a firm'' and inserting '', a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm''.

(8) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(A) in subparagraph (A), by striking ''the supervisory personnel'' and inserting ''any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person''; and

(B) in subparagraph (B)—

(i) by striking ''No associated person'' and inserting ''No current or former supervisory person''; and

(ii) by striking ''any other person'' and inserting ''any associated person''.

(9) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking ''any member'' and inserting ''any person who is, or at the time of the alleged misconduct was, a member''.

(d) EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

''(c) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 17(a) involving—

''(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.''.

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(A) by striking ''The district'' and inserting the following:

''(a) IN GENERAL.—The district''; and

(B) by adding at the end the following new subsection:

''(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of the antifraud provisions of this title involving—

''(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.''.

(3) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended—

(A) by striking ''The district'' and inserting the following:

''(a) IN GENERAL.—The district''; and

(B) by adding at the end the following new subsection:

''(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 206 involving—

''(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.''.

(e) CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after ''controlled person is liable'' the following: ''(including to the Commission in any action brought under paragraph (1) or (3) of section 21(d))''.

(f) AIDING AND ABETTING UNDER THE SECURITIES LAWS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(A) by striking ''Every person who'' and inserting ''(a) CONTROLLING PERSONS.—Every person who''; and

(B) by adding at the end the following:

''(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 20, any person

that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

(2) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a–48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

''(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

(3) UNDER THE INVESTMENT ADVISERS ACT.—Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended by inserting at the end the following new subsection:

''(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.''.

(4) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting ''or recklessly'' after ''knowingly''.

SEC. 993. ADDRESSING ISSUES REVEALED BY THE MADOFF FRAUD.

(a) REVISION TO RECORDKEEPING RULE.—

(1) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(A) in subsection (a)(1), by adding at the end the following: ''Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.''; and

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

''(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

''(A) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

''(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.''.

(2) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

''(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

''(1) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

''(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.''.

(b) STREAMLINED HIRING AUTHORITY FOR MARKET SPECIALISTS.—

(1) APPOINTMENT AUTHORITY.—Section 3114 of title 5, United States Code, is amended by striking the section heading and all that follows through the end of subsection (a) and inserting the following:

''§ 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

''(a) APPLICABILITY.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 31 of title 5, United States Code, is amended by striking the item relating to section 3114 and inserting the following:

''3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.''.

(3) PAY AUTHORITY.—The Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission.

(c) SIPC REFORMS.—

(1) REMOVING THE DISTINCTION BETWEEN CLAIMS FOR CASH AND CLAIMS FOR SECURITIES.—The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) is amended—

(A) in section 8(e)(4)(B) (15 U.S.C. 78fff–2(e)(4)(B)), by striking ''for cash or securities'';

(B) in section 9(a) (15 U.S.C. 78fff–3(a))—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(C) in section 16(2)(B) (15 U.S.C. 78lll(2)(B)), by striking ''for cash or securities''.

(2) LIQUIDATION OF A CARRYING BROKER-DEALER.—Section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)) is amended—

(A) by striking the undesignated matter following subparagraph (B);

(B) in subparagraph (A), by striking ''any member of SIPC'' and inserting ''the member'';

(C) in subparagraph (B), by striking the comma at the end and inserting a period;

(D) in the matter preceding subparagraph (A), by striking ''If SIPC'' and inserting the following:

''(A) IN GENERAL.—SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 21(e) or 27 of the Securities Exchange Act of 1934, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 9, if SIPC''; and

(E) by adding at the end the following:

''(B) CONSENT REQUIRED.—No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC.''.

SEC. 994. ENHANCED ABILITY OF COMMISSION TO OBTAIN NEEDED INFORMATION.

(a) INVESTMENT COMPANY EXAMINATION.—Section 31(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)(1)) is amended to read as follows:

''(1) IN GENERAL.—The following records shall be subject, at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors:

''(A) All records of a registered investment company.

''(B) All records of a underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a registered investment company.

''(C) All records required to be maintained and preserved by a investment adviser that is not a majority-owned subsidiary of a registered investment company.

''(D) All records required to be maintained and preserved by a depositor of a registered investment company.

''(E) All records required to be maintained and preserved by a principal underwriter for a registered investment company (other than a closed-end company).''.

(b) EXPANDED ACCESS TO GRAND JURY INFORMATION.—Chapter 215 of title 18, United States Code, is amended by adding at the end the following:

''§ 3323. Access to grand jury information

''(a) DISCLOSURE.—

''(1) IN GENERAL.—Upon motion of an attorney for the government, a court may direct disclosure of matters occurring before a grand jury during an investigation of conduct that may constitute a violation of any provision of the securities laws to the Securities and Exchange Commission for use in relation to any matter within the jurisdiction of the Commission.

''(2) SUBSTANTIAL NEED REQUIRED.—A court may issue an order under paragraph (1) only upon a finding of a substantial need in the public interest.

''(b) USE OF MATTER.—A person to whom a matter has been disclosed under this section shall not use such matter, other than for the purpose for which such disclosure was authorized.

''(c) DEFINITIONS.—As used in this section—

''(1) the terms 'attorney for the government' and 'grand jury information' have the meanings given to those terms in section 3322 of title 18, United States Code; and

''(2) the term 'securities laws' has the same meaning as in section 3(a)(47) of the Securities Exchange Act of 1934.''.

(c) ENHANCED AUTHORITY OF THE SECURITIES AND EXCHANGE COMMISSION TO CONDUCT SURVEILLANCE AND RISK ASSESSMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by adding at the end the following:

''(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject, at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.''.

(2) INVESTMENT COMPANY ACT OF 1940.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)) is amended by adding at the end the following:

''(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.''.

(3) DOCUMENT REQUESTS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following:

''(e) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.''.

(d) PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(A) in subsection (d), by striking ''subsection (e)'' and inserting ''subsection (f)'';

(B) by redesignating subsection (e) as subsection (f); and

(C) by inserting after subsection (d) the following:

''(e) RECORDS OBTAINED FROM REGISTERED PERSONS.—

''(1) IN GENERAL.—Except as provided in subsection (f), the Commission shall not be compelled to disclose records or information obtained pursuant to section 17(b), or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities.

''(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 17 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.''.

(2) INVESTMENT COMPANY ACT OF 1940.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(A) by striking subsection (c) and inserting the following:

''(c) LIMITATIONS ON DISCLOSURE BY COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.'';

(B) by striking subsection (d); and

(C) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by adding at the end the following:

''(d) LIMITATIONS ON DISCLOSURE BY THE COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.''.

(e) EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED.—Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) PRODUCTION OF DOCUMENTS.—

''(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, or issues an audit report, performs audit work, or conducts interim reviews, the foreign public accounting firm shall—

''(A) produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to any such audit work or interim review to the Commission or the Board, upon the request of the Commission or the Board; and

''(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

''(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

''(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or the Board; and

''(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.'';

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (c) the following:

''(d) SERVICE OF REQUESTS OR PROCESS.—

''(1) IN GENERAL.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any request by the Commission or the Board under this section and any process, pleadings, or other papers in any action brought to enforce this section.

''(2) SPECIFIC AUDIT WORK.—Any foreign public accounting firm that performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, or issues an audit report, performs audit work, or performs interim reviews, shall designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under this section and any process, pleading, or other papers in any action brought to enforce this section.

''(e) SANCTIONS.—A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be deemed a violation of this Act.

''(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provisions of this section, the staff of the Commission or the Board may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the Board.''.

(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) in subsection (d), as amended by subsection (d)(1)(A), by striking ''subsection (f)'' and inserting ''subsection (g)'';

(2) in subsection (e), as added by subsection (d)(1)(C), by striking ''subsection (f)'' and inserting ''subsection (g)'';

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting after subsection (e) the following:

''(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

''(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring

that information to or permitting that information to be used by—

''(A) any agency (as defined in section 6 of title 18, United States Code);

''(B) the Public Company Accounting Oversight Board;

''(C) any self-regulatory organization;

''(D) any foreign securities authority;

''(E) any foreign law enforcement authority; or

''(F) any State securities or law enforcement authority.

''(2) NONDISCLOSURE OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—The Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

''(3) NONWAIVER OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—

''(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

''(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'privilege' includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, State, or foreign law;

''(B) the term 'foreign law enforcement authority' means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law; and

''(C) the term 'State securities or law enforcement authority' means the authority of any State or territory that is empowered under State or territory law to detect, investigate, or prosecute potential violations of law.''.

(g) CONFORMING AMENDMENT WITH RESPECT TO REGISTRATION.—Section 102(b)(3)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212(b)(3)(A)) is amended by striking ''by the Board'' and inserting ''by the Commission or the Board''.

SEC. 995. MODERNIZATION OF INVESTOR PROTECTIONS.

(a) BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.—

(1) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(A) in subsection (d)—

(i) in paragraph (1)—

(I) by inserting after ''within ten days after such acquisition,'' the following: ''or within such shorter period as the Commission may establish, by rule,''; and

(II) by striking ''send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange on which the security is traded, and''; and

(ii) in paragraph (2)—

(I) by striking ''in the statements to the issuer and the exchange, and''; and

(II) by striking ''shall be transmitted to the issuer and the exchange and''; and

(B) in subsection (g)—

(i) in paragraph (1), by striking ''shall send to the issuer of the security and''; and

(ii) in paragraph (2)—

(I) by striking ''sent to the issuer and''; and

(II) by striking ''shall be transmitted to the issuer and''.

(2) SHORT-SWING PROFIT REPORTING.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(A) in paragraph (1), by striking ''(and, if such security is registered on a national securities exchange, also with the exchange)''; and

(B) in paragraph (2)(B), by inserting after ''officer'' the following: '', or within such shorter period as the Commission may establish, by rule''.

(b) ENHANCED APPLICATION OF ANTIFRAUD PROVISIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9—

(A) by striking ''registered on a national securities exchange'' each place that term appears and inserting ''other than a government security'';

(B) in subsection (b), by striking ''by use of any facility of a national securities exchange,''; and

(C) in subsection (c), by inserting after ''unlawful for any'' the following: ''broker, dealer, or'';

(2) in section 10(a)(1), by striking ''registered on a national securities exchange'' and inserting ''other than a government security''; and

(3) in section 15(c)(1)(A), by striking ''otherwise than on a national securities exchange of which it is a member''.

(c) DEFINITION OF ''INTERESTED PERSON''.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) in clause (vii), by striking the colon at the end and inserting a comma;

(2) by inserting before ''*Provided*,'' the following:

''(viii) any natural person who is a member of a class of persons who the Commission, by rule or regulation, determines are unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business or professional relationship with such company or any affiliated person of such company; or

''(II) a close familial relationship with any natural person who is an affiliated person of such company:''; and

(3) in clause (vii), by striking ''two'' and inserting ''5''.

(d) LOST AND STOLEN SECURITIES.—Section 17(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(1)) is amended—

(1) in subparagraph (A), by striking ''missing, lost, counterfeit, or stolen securities'' and inserting ''securities that are missing, lost, counterfeit, stolen, cancelled, or any other category of securities as the Commission, by rule, may prescribe''; and

(2) in subparagraph (B), by striking ''or stolen'' and inserting ''stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe''.

(e) FINGERPRINTING.—Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(1) in the first sentence, by striking ''and registered clearing agency,'' and inserting ''registered clearing agency, registered securities information processor, national securities exchange, and national securities association''; and

(2) in the second sentence, by striking ''or clearing agency,'' and inserting ''clearing agency, securities information processor, national securities exchange, or national securities association,''.

SEC. 996. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission (in this section referred to as the ''Commission'') shall hire an independent consultant of high caliber who has expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the Commission, as well as the relationship of the Commission with and the reliance by the Commission on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the oversight of the Commission.

(2) SPECIFIC AREAS FOR STUDY.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the Commission;

(B) improving communications between offices and divisions of the Commission;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the Commission requires to monitor the effect of such trading and advances on the market;

(E) the hiring authorities, workplace policies, and personal practices of the Commission, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of Commission employees and whether the present skill set diversity efficiently and effectively fosters the mission of the Commission of investor protection; and

(iv) the application of civil service laws by the Commission;

(F) whether the oversight by the Commission of, and reliance by the Commission on, self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the reliance by the Commission on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than 150 days after the independent consultant is retained under subsection (a), the independent consultant shall submit a report to the Commission and to Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1); and

(2) recommendations for legislative, regulatory, or administrative action that the independent consultant determines appropriate to enable the Commission and other entities on which the independent consultant reports to perform the missions of the Commission, whether mandated by statute or otherwise.

(c) COMMISSION REPORT.—Not later than 6 months after the date on which the consultant submits the report under subsection (b), and every 6 months thereafter during the 2-year period following the date on which the consultant submits the report under subsection (b), the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the

House of Representatives describing the implementation by the Commission of the regulatory and administrative recommendations contained in the report of the independent consultant under subsection (b).

SEC. 997. MUNICIPAL SECURITIES RULEMAKING BOARD.

Section 975(b)(1) of this Act is amended by striking subparagraph (B) and inserting the following:

''(B) by striking the second sentence and inserting the following 'The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 independent individuals, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as ''public representatives''); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ''broker-dealer representatives''), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ''bank representatives''), and at least 1 individual who is associated with a municipal advisor (which member is hereinafter referred to as the ''advisor representative'').' ''.

SA 3855. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1055, after line 22, add the following:

(c) LIABILITY FOR SALE OF SECURITIES.—Section 12 of the Securities Act of 1933 (15 U.S.C. 77l) is amended—

(1) in subsection (a)(2)—

(A) by inserting after ''subsection (a) thereof'' the following: '', and whether or not exempted by the provisions of section 4''; and

(B) by inserting after ''prospectus'' the following: '', other offering document,''; and

(2) in subsection (b), by inserting after ''prospectus'' the following: '', other offering document,''.

SA 3856. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1055, after line 22, add the following:

(c) AUTHORITY TO IMPOSE CONDITIONS ON THE AVAILABILITY OF CERTAIN EXEMPTIONS.—

(1) AUTHORITY ESTABLISHED.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(A) by striking ''The provisions of section 5'' and inserting the following:

''(a) IN GENERAL.—The provisions of section 5''; and

(B) by adding at the end the following:

''(b) AUTHORITY TO IMPOSE CONDITIONS.—The Commission may, by rules and regulations, condition the availability of any of the exemptions under subsection (a) on such disclosure, filing, or other requirements as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.''.

(2) CONFORMING AMENDMENTS.—

(A) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(i) in section 16(a)(3) (15 U.S.C. 77p(a)(3)) is amended by striking ''section 4(2)'' and inserting ''section 4(a)(2)''; and

(ii) in section 18(b)(4) (15 U.S.C. 77r(b)(4))—

(I) in subparagraph (A), by striking ''section 4'' and inserting ''section 4(a)'';

(II) in subparagraph (B), by striking ''section 4(4)'' and inserting ''section 4(a)(4)''; and

(III) in subparagraph (D), by striking ''section 4(2)'' each place that term appears and inserting ''section 4(a)(2)''.

(B) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(i) in section 15A(j) (15 U.S.C. 78o-3(j)), by striking ''4(2), or 4(6)'' and inserting ''4(a)(2), or 4(a)(6)''; and

(ii) in section 28(f)(5)(E) (15 U.S.C. 778bb(f)) by striking ''section 4(2)'' and inserting ''section 4(a)(2)''.

(C) REVISED STATUTES.—Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended, in the seventh paragraph, by striking ''section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5))'' and inserting ''section 4(a)(5) of the Securities Act of 1933''.

(D) HOME OWNERS' LOAN ACT.—Section 5(c)(1)(R)(i) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)(R)(i)) by striking ''section 4(5)'' and inserting ''section 4(a)(5)''.

(E) FEDERAL CREDIT UNION ACT.—Section 107(15)(A) of the Federal Credit Union Act (12 U.S.C. 1757(15)(A)) is amended by striking ''section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5))'' and inserting ''section 4(a)(5) of the Securities Act of 1933''.

(F) SECONDARY MORTGAGE MARKET ENHANCEMENT ACT OF 1984.—Section 106(a)(1) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1(a)(1)) is amended by striking ''section 4(5)'' each place that term appears and inserting ''section 4(a)(5)''.

SA 3857. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Page 1268, strike line 24 and all that follows through page 1270, line 10, and insert the following:

(c) EXAMINATIONS.—

(1) IN GENERAL.—The prudential regulator shall, on a periodic basis, examine, or require reports from, each institution referred to in subsection (a) for purposes of ensuring and enforcing compliance with the requirements of Federal consumer financial law.

(2) BUREAU ROLE IN SUPERVISION.—

(A) AGENCY RESPONSIBILITIES.—The prudential regulator shall provide all reports, records, and documentation related to the examination process to the Bureau on a timely and ongoing basis.

(B) BUREAU INVOLVEMENT.—The Bureau may, at its discretion, include an examiner on any examination conducted under paragraph (1). The prudential regulator shall involve such Bureau examiner in the entire examination process, including setting the scope of an examination, participating in the examination, and providing input on the examination report, matters requiring attention and examination ratings.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, the prudential regulator shall have primary authority to enforce compliance with any Federal consumer financial law by institutions referred to in subsection (a) of any of the consumer financial laws.

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—

(i) IN GENERAL.—When the Bureau has reason to believe that an institution described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau may recommend in writing to the appropriate agency that the appropriate agency initiate an enforcement proceeding to the extent the appropriate agency is authorized by that Federal law or by this title.

(ii) EXPLANATION.—Any recommendation under clause (i) shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF THE BUREAU.—If the appropriate agency does not, before the end of the 120-day period beginning on the date on which the appropriate agency receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the Bureau may initiate an enforcement proceeding as permitted by Federal law.

SA 3858. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1243, strike line 15, and all that follows through page 1248, line 18.

SA 3859. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the

financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1044 and insert the following:

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter One of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

''SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'national bank' includes—

''(A) any bank organized under the laws of the United States;

''(B) any affiliate of a national bank;

''(C) any subsidiary of a national bank; and

''(D) any Federal branch established in accordance with the International Banking Act of 1978;

''(2) the terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act; and

''(3) the term 'State consumer law' means any law of a State that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

''(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.—Except as provided in subsection (c), and notwithstanding any other provision of Federal law, any consumer protection provision of a State consumer law of general application, shall apply to a national bank operating within the jurisdiction of that State, including any law relating to—

''(1) unfair or deceptive acts or practices;

''(2) consumer fraud; and

''(3) repossession, foreclosure, and debt collections.

''(c) EXCEPTIONS.—

''(1) IN GENERAL.—Subsection (b) shall not apply with respect to any State consumer law, if—

''(A) the State consumer law discriminates against national banks; or

''(B) the State consumer law is inconsistent with provisions of Federal law, other than this title, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law).

''(2) RULE OF CONSTRUCTION.—For purposes of paragraph (1), a State consumer law is not inconsistent with Federal law, if the protection that the State consumer law affords consumers is greater than the protection provided under Federal law, as determined by the Bureau of Consumer Financial Protection.

''(d) STATE BANKING LAWS ENACTED PURSUANT TO FEDERAL LAW.—

''(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of Federal law, any State consumer law shall apply to a national bank operating within the jurisdiction of that State, if such State consumer law—

''(A) is applicable to State banks; and

''(B) was enacted pursuant to or in accordance with, and is not inconsistent with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer Credit Protection Act, and the Real Estate Settlement Procedures Act of 1974, that explicitly or by implication, permits States to exceed or supplement the requirements of any comparable Federal law.

''(2) EXCEPTIONS.—

''(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any State law, if—

''(i) the State consumer law discriminates against national banks; or

''(ii) the State consumer law is inconsistent with provisions of Federal law, other than this title, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law).

''(B) RULE OF CONSTRUCTION.—For purposes of subparagraph (A), a State consumer law is not inconsistent with Federal law, if the protection that the State consumer law affords consumers is greater than the protection provided under Federal law, as determined Bureau of Consumer Financial Protection.

''(e) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section shall be construed as altering or affecting the applicability to national banks of any State law which is not described in this section.

''(f) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a transaction at the inception of the transaction may not be preempted under Federal law solely because a national bank subsequently acquires the asset or instrument that is the subject of the transaction.

''(g) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of any provision of the law of any State with respect to any national bank shall not be treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983).''.

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

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

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, May 18, 2010, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose is to receive testimony from the Administration on issues related to offshore oil and gas exploration including the accident involving the Deepwater Horizon in the Gulf of Mexico.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by email to Abigail_Campbell@energy.senate.gov.

For further information, please contact Linda Lance at (202) 224–7556 or Abigail Campbell at (202) 224–1219.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on May 5, 2010, at 10 a.m., to conduct a hearing entitled ''Terrorists and Guns: The Nature of the Threat and Proposed Reforms.''

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

COMMITTEE ON THE JUDICIARY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on May 5, 2010, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The Increased Importance of the Violence Against Women Act in a Time of Economic Crisis.''

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on May 5, 2010, at 10 a.m., to conduct a hearing entitled ''Voting By Mail: An Examination of State and Local Experiences.''

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on May 5, 2010, to conduct a hearing entitled ''TBI: Progress in Treating the Signature Wounds of the Current Conflicts.'' The Committee will meet in room 418 of the Russell Senate Office Building beginning at 9:30 a.m.

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

SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air and Nuclear Safety of the Committee on Environment and Public Works be authorized to meet during the session of the Senate on May 5, 2010, at 10 a.m. in room 406 of the Dirksen Office Building.

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

SUBCOMMITTEE ON NATIONAL PARKS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Subcommittee on National Parks be authorized to meet during the session of the Senate on May 5, 2010, at 2:30 p.m., in room SD–366 of the Dirksen Senate Office Building.

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

and Integrity Information System, Federal Business Opportunities Database, Federal Procurement Data System-Next Generation, Past Performance Information Retrieval System, and USAspending.gov, among others.

We must integrate these databases to ensure that contracting officials have a one-stop source for relevant contracting information. I am pleased that the General Services Administration has taken some positive steps in this direction, but any consolidation must be comprehensive. Accordingly, this bill requires the Office of Management and Budget to develop and submit a plan to integrate and consolidate the nine most important databases into a single searchable and linked network.

Another reason why suspended and debarred companies continue to receive federal contracts in error is because the unique identification system used to track companies is ineffective and in need of modernization. The Government Accountability Office has documented that the current identification system fails to adequately track subsidiaries, spin-offs, shell companies, and other related entities. This weak tracking system permits some suspended and debarred companies to access federal dollars to which they are not legally entitled.

To that end, this bill requires the Inspector General of the General Services Administration to determine whether the existing system of identifying numbers for contractors is adequately tracking Federal contractors, and develop a plan for developing and adopting a new and more robust identification system.

I urge my colleagues to support this bill. The American people entrust us with their hard-earned tax dollars, and we have a responsibility to ensure that their money is being spent appropriately.

By Mr. BEGICH (for himself and Mr. GRASSLEY):

S. 3325. A bill to amend title 38, United States Code, to authorize the waiver of the collection of copayments for telehealth and telemedicine visits of veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. BEGICH. Mr. President, today I rise to introduce legislation to amend title 38, related to this Nation's obligation to provide benefits to our veterans. Specifically, the bill I introduce today with my distinguished colleague, Senator GRASSLEY of Iowa will waive collection of copayments for telehealth and telemedicine visits for veterans.

More than 42,000 veterans are receiving care in their homes, enrolled in the Veterans Health Administration, VHA, Telemedicine program as one form of treatment. In Alaska, as of March 2010, there were 226 veterans receiving this service. Just over 100 of those live in rural Alaska.

Home Telehealth programs provide needed care for the 2–3 percent of veterans who account for 30 percent or more of agency resources. These men and women are frequent clinic attendees and often require urgent hospital admissions. VHA programs have demonstrated reduced hospital admissions and clinic and emergency room visits, and contribute to an improved quality of life for our veterans.

For no group of veterans is this service more important than for those who live in rural and remote Alaska. Telemedicine has become an increasingly integral component in addressing the needs of veterans residing in rural and remote areas, and is critical to ensuring they have proper access to health care, especially in rural areas.

While the VHA is saving taxpayers money by using telemedicine, currently all telemedicine visits require veterans receiving these treatments to make copayments. My legislation would implement a simple fix. It would waive the required copayments—sometimes up to $50.00 per visit—to lessen the burden on our veterans, who have sacrificed in service to our great Nation. I believe that waiving these fees may encourage more veterans to take advantage of VHA's telehealth programs, which can be a godsend for rural veterans with few other viable options.

For rural veterans in Alaska, who have to travel by small float planes or boats or even snow machines to get to the nearest clinic for monitoring of their diabetes, high blood pressure, or other chronic conditions, Congress can go a long way in repaying this Nation's debt to our veterans by passing this legislation.

The VHA plans to expand Home Telehealth for weight management, substance abuse, mild traumatic brain injury, dementia, and palliative care, as well as enabling veterans to use mobile devices to access care. I would hate to see these vital services go unused by veterans living in remote Alaskan villages because of the cost of copayments. But, this is not primarily about saving veterans money. This is about the Federal Government doing what is good for our veterans. The monetary benefits for veterans are a plus.

Basically, this legislation will amend title 38 to authorize the waiver of the collection of copayments for telehealth and telemedicine visits of veterans by giving the Secretary the authority to do so.

In closing, I must say it is an honor for me to serve as a member of the Senate Veterans' Affairs Committee. I feel very privileged to be involved with policy formation that helps our veterans, and indeed to be at the same table as the distinguished chairman of the committee, a veteran of World War II himself, Senator DANIEL AKAKA, who throughout his service in Congress has been a true advocate for our veterans. I appreciate the guidance he has provided me, and the assistance his staff has provided mine in preparation of this legislation.

This is a bipartisan bill to address an issue with no partisan connection. I strongly encourage my colleagues to join Senator GRASSLEY and me in cosponsoring this legislation, and I urge expeditious consideration of the legislation to address a growing need for our rural veterans.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3860. Mr. CARPER (for himself, Mr. ENSIGN, Mr. GREGG, and Mr. JOHANNS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3861. Mr. CARPER (for himself, Mr. ENSIGN, Mr. GREGG, Mr. CORKER, and Mr. JOHANNS) 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 3862. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3863. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3864. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3865. Mr. GREGG (for himself and Mr. JOHANNS) 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 3866. Mr. WYDEN (for himself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3867. Mr. ENSIGN 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 3868. Mr. ENSIGN 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 3869. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3787 submitted by Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3870. Mr. KERRY (for himself, Mr. BROWN of Massachusetts, and 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 3871. Mr. CARDIN 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 3872. Mr. BROWN of Massachusetts (for himself, Mr. KERRY, and Mr. GREGG) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3873. Mr. DEMINT (for himself and Mr. COBURN) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3874. Mr. PRYOR (for himself, Mr. BAUCUS, Mr. TESTER, Mrs. SHAHEEN, Mr. JOHNSON, Mr. BENNET, 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 3875. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 3775 submitted by Mr. WYDEN (for himself and Mr. GRASSLEY) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3876. Mr. MENENDEZ (for himself and Mr. BURRIS) 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 3877. 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 3878. Mr. CASEY (for himself, Mr. BROWN of Ohio, and 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 3879. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3880. Mr. BYRD (for himself and Mr. ROCKEFELLER) 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 3881. 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 3882. Mr. CORKER (for himself, Mr. GREGG, Mr. SHELBY, Mrs. HUTCHISON, Mr. LEMIEUX, and Mr. COBURN) 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 3883. Ms. SNOWE (for herself and Mr. PRYOR) 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 3884. Ms. CANTWELL (for herself, Mr. MCCAIN, Mr. KAUFMAN, Mr. HARKIN, Mr. FEINGOLD, and Mr. SANDERS) 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 3885. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3886. Mr. ROCKEFELLER (for himself and Mr. BYRD) 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 3887. Mr. CARPER (for himself, Mr. ENSIGN, Mr. GREGG, Mr. CORKER, and Mr. JOHANNS) 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 3888. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3889. Mr. AKAKA (for himself, Mr. MENENDEZ, and Mr. DURBIN) 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 3890. Mr. BAYH (for himself and Mr. MERKLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3891. Mr. CASEY (for himself, Mrs. GILLIBRAND, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3892. Mr. BINGAMAN (for himself, Ms. MURKOWSKI, Mr. REID, Mr. BROWNBACK, Ms. CANTWELL, Mr. CORNYN, Mr. WYDEN, and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3893. Mr. CORNYN 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 3894. Mr. CORNYN 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 3895. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3896. Mr. GREGG (for himself, Mr. BROWN of Massachusetts, and Mr. KERRY) 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 3897. Mr. DORGAN 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 3898. Mr. ENSIGN proposed an amendment to amendment SA 3733 proposed by Mr. BROWN of Ohio (for himself, Mr. KAUFMAN, Mr. CASEY, Mr. WHITEHOUSE, Mr. MERKLEY, Mr. HARKIN, Mr. SANDERS, and Mr. BURRIS) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 3899. 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 3900. 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 3901. Mr. CARDIN (for himself, Mr. ENZI, and Mr. BROWNBACK) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3902. Mr. FRANKEN (for himself, Ms. SNOWE, Mrs. MURRAY, Mrs. SHAHEEN, Mr. SCHUMER, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. CASEY, and Mr. FEINGOLD) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3903. Mr. CHAMBLISS 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 3904. Mr. CHAMBLISS 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 3905. Mr. CHAMBLISS 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 3906. Mr. CHAMBLISS 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 3907. Mr. CHAMBLISS 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 3908. Mr. CHAMBLISS 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 3909. Mr. CHAMBLISS 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 3860. Mr. CARPER (for himself, Mr. ENSIGN, Mr. GREGG, and Mr. JOHANNS) 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 1086, strike line 3 and all that follows through ''Not'' on page 1090, line 9, and insert the following:

SEC. 971. PROXY ACCESS.

(a) PROXY ACCESS.—Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end the following:

''(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

''(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

''(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).''.

(b) REGULATIONS.—The Commission may issue rules permitting the use by shareholders of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

SEC. 972. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

''SEC. 14B. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.

''Not

SA 3861. Mr. CARPER (for himself, Mr. ENSIGN, Mr. GREGG, Mr. CORKER, and Mr. JOHANNS) 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.**'' on page 1090, line 3, and insert the following:

SEC. 972.

SA 3862. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

In section 111(b)(1) of the amendment, strike subparagraph (A) and insert the following:

(A) the Chairperson of the Council, who—

(i) shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals having expertise in the financial services industry; and

(ii) may not, during such service, also serve as the head of any primary financial regulatory agency;

(B) the Secretary of the Treasury;

SA 3863. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 23, between lines 2 and 3, insert the following:

(I) the Chairman of the National Credit Union Administration; and

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SA 3864. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 23, between lines 2 and 3, insert the following:

(I) a State insurance commissioner—

(i) to be designated using a selection process determined by the insurance commissioners of the States; and

(ii) who shall serve for a term of not longer than 2 years; and

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SA 3865. Mr. GREGG (for himself and Mr. JOHANNS) 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:

Beginning on page 513, strike line 21 and all that follows through page 515, line 11.

SA 3866. Mr. WYDEN (for himself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 123. DISCLOSURE OF FINANCIAL INTERESTS IN THE DECLINE IN VALUE OF FINANCIAL PRODUCTS.

(a) RECOMMENDATIONS BY COUNCIL.—Not later than 180 days after the date of enactment of this Act, the Council shall make recommendations to the primary financial regulatory agencies to require any seller of a financial product or instrument to disclose to the purchaser or prospective purchaser of that product—

(1) whether the seller has any direct financial interest in the decline in value of the product; and

(2) whether the seller has any direct financial interest in the increase in value of the product.

(b) PROCEDURES AND IMPLEMENTATION.—The procedural and implementation provisions of subsections (b) and (c) of section 120 shall apply to recommendations of the Council under this section.

SA 3867. Mr. ENSIGN 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 1034, strike line 8 and all that follows through line 21, and insert the following:

SEC. 935. CONSIDERATION OF INFORMATION FROM SOURCES OTHER THAN THE ISSUER IN RATING DECISIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

''(v) INFORMATION FROM SOURCES OTHER THAN THE ISSUER.—In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer or the underwriter, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.''.

SA 3868. Mr. ENSIGN 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 1034, strike line 22 and all that follows through page 1035, line 9, and insert the following:

SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules that are reasonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

(1) meets standards of training, experience, best practices, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates;

(2) is tested for knowledge of the credit rating process; and

(3) is required to participate in annual continuing education seminars to maintain the standards described in paragraph (1).

SA 3869. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3787 submitted by Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 3 of the amendment, strike lines 11 through 13 and insert the following:

(2) FINANCIAL COMPANY.—The term ''financial company'' means—

(A) any nonbank financial company supervised by the Board;

(B) the Federal National Mortgage Association; and

(C) the Federal Home Loan Mortgage Corporation.

SA 3870. Mr. KERRY (for himself, Mr. BROWN of Massachusetts, and 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 ''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, strike line 14 and all that follows through page 371, line 19, and insert the following:

Subtitle D—Federal Thrift Charter

SEC. 341. FEDERAL SAVINGS ASSOCIATIONS.

Section 5(a) of the Home Owners' Loan Act (12 U.S.C. 1464(a)) is amended to read as follows:

''(a) IN GENERAL.—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Comptroller of the Currency is authorized, under such regulations as the Comptroller of the Currency may prescribe, to provide for the chartering, examination, operation, and regulation of associations to be known as 'Federal savings associations' (including Federal savings banks), giving primary consideration to the best practices of thrift institutions in the United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.''.

SA 3871. Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, between lines 6 and 7, insert the following:

(3) INVESTMENT COMPANIES AND ADVISERS.—In the event that an investment company required to be registered under the Investment Company Act of 1940, or the registered investment adviser to such a company, is subject to supervision by the Board of Governors, the Council shall, in consultation with the Commission and in lieu of the prudential standards outlined in subsections (b) through (f), recommend to the Board of Governors such alternative enhanced regulatory requirements as are necessary to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress of the investment company or investment adviser. Such alternative requirements shall not include capital requirements.

On page 91, between lines 23 and 24, insert the following:

(3) INVESTMENT COMPANIES AND ADVISERS.—In the case of an investment company required to be registered under the Investment Company Act of 1940, or the registered investment adviser to such a company, that is supervised by the Board of Governors, the Board of Governors shall meet its obligations under this section by adopting the alternative enhanced regulatory requirements recommended by the Council under section 115.

SA 3872. Mr. BROWN of Massachusetts (for himself, Mr. KERRY, and Mr. GREGG) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, line 25, strike ''and'' and all that follows through ''the term'' on page 486, line 1 and insert the following:

''(3) the term 'insured depository institution' does not include an insured depository institution—

''(A) the activities of which are limited to providing trust or fiduciary services; and

''(B) that does not—

''(i) accept insured deposits from persons other than affiliates;

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)); or

''(iii) does not make commercial or consumer loans; and

''(4) the term''.

SA 3873. Mr. DEMINT (for himself and Mr. COBURN) 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. ____. POINT OF ORDER ON LEGISLATION THAT PROVIDES THE GOVERNMENT WITH NEW POWERS TO GIVE TAXPAYER-FUNDED BAILOUTS OR ANY OTHER PREFERENTIAL TREATMENT TO ANY PUBLIC OR PRIVATE INSTITUTION IN FINANCIAL DISTRESS.

(a) IN GENERAL.—In the Senate, it shall not be in order to consider any bill, joint resolution, amendment, motion, or conference report that provides the Government with new powers to give taxpayer-funded bailouts or any other preferential treatment to any public or private institution in financial distress.

(b) SUSPENSION OF POINT OF ORDER.—A point of order raised under subsection (a) shall be suspended in the Senate upon certification by the Congressional Budget Office that such bill, joint resolution, amendment, motion or conference report does not provide the Government with new powers to give taxpayer-funded bailouts or any other preferential treatment to any public or private institution in financial distress.

(c) WAIVER AND APPEAL.—

(1) WAIVER.—This section may be waived or suspended only by an affirmative vote of two-thirds of the Members, duly chosen and sworn.

(2) APPEAL.—An affirmative vote of two-thirds of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

SA 3874. Mr. PRYOR (for himself, Mr. BAUCUS, Mr. TESTER, Mrs. SHAHEEN, Mr. JOHNSON, Mr. BENNET, 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 304, strike line 3 and all that follows though page 313, line 21, and insert the following:

(c) CERTAIN FUNCTIONS OF THE BOARD OF GOVERNORS.—

(1) COMPTROLLER OF THE CURRENCY.—Except as provided in paragraph (3), there are transferred to the Office of the Comptroller of the Currency all functions of the Board of Governors (including any Federal reserve bank) relating to the supervision of—

(A) any bank holding company (other than a foreign bank)—

(i) having less than $50,000,000,000 in total consolidated assets; and

(ii) having—

(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are Federal depository institutions—

(aa) exceed the total consolidated assets of all subsidiary State depository institutions that are State member banks; and

(bb) exceed the total consolidated assets of all subsidiary State depository institutions that are State nonmember insured banks and State savings associations; and

(B) any subsidiary (other than a depository institution) of a bank holding company that is described in subparagraph (A).

(2) CORPORATION.—Except as provided in paragraph (3), there are transferred to the Corporation all functions of the Board of Governors (including any Federal reserve bank) relating to the supervision of—

(A) any bank holding company (other than a foreign bank)—

(i) having less than $50,000,000,000 in total consolidated assets; and

(ii) having—

(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are State nonmember insured banks or State savings associations; or

(II) a subsidiary that is a State nonmember insured bank or a State savings association and a subsidiary that is not a State nonmember insured bank or State savings association, if the total consolidated assets of all such subsidiaries that are State nonmember insured banks or State savings associations—

(aa) exceeds the total consolidated assets of all subsidiaries that are Federal depository institutions; and

(bb) exceeds the total consolidated assets of all subsidiaries that are State member banks; and

(B) any subsidiary (other than a depository institution) of a bank holding company that is described in subparagraph (A).

(3) RULEMAKING AUTHORITY.—No rulemaking authority of the Board of Governors is transferred to the Office of the Comptroller of the Currency or the Corporation under this subsection.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to transfer to the Office of the Comptroller of the Currency or the Corporation any functions of the Board of Governors (including any Federal reserve bank) relating to the supervision of—

(A) any State member bank;

(B) any bank holding company (other than a foreign bank)—

(i) having less than $50,000,000,000 in total consolidated assets; and

(ii) having—

(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are State member banks; or

(II) a subsidiary that is a State member bank and a subsidiary that is not a State member bank, if the total consolidated assets of all subsidiaries that are State member banks—

(aa) exceed the total consolidated assets of all subsidiaries that are Federal depository institutions; and

(bb) exceed the total consolidated assets of all subsidiaries that are State nonmember insured banks and State savings associations; or

(C) any subsidiary (other than a depository institution) of a bank holding company that is described in subparagraph (B).

(d) 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;

''(C) any bank holding company (other than a foreign bank)—

''(i) having less than $50,000,000,000 in total consolidated assets; and

''(ii) having—

''(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

''(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are Federal depository institutions—

''(aa) exceed the total consolidated assets of all subsidiary State depository institutions that are State member banks; and

''(bb) exceed the total consolidated assets of all subsidiary State depository institutions that are State nonmember insured banks and State savings associations;

''(D) any subsidiary (other than a depository institution) of a bank holding company that is described in subparagraph (C);

''(E) any Federal savings association;

''(F) any savings and loan holding company (other than a foreign bank)—

''(i) having less than $50,000,000,000 in total consolidated assets; and

''(ii) having—

''(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are Federal depository institutions; or

''(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are Federal depository institutions exceed the total consolidated assets of all such subsidiaries that are State depository institutions; and

''(G) any subsidiary (other than a depository institution) of a savings and loan holding company that is described in subparagraph (F);

''(2) the Federal Deposit Insurance Corporation, in the case of—

''(A) any State nonmember insured bank;

''(B) any foreign bank having an insured branch;

''(C) any State savings association;

''(D) any bank holding company (other than a foreign bank)—

''(i) having less than $50,000,000,000 in total consolidated assets; and

''(ii) having—

''(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are State nonmember insured banks or State savings associations; or

''(II) a subsidiary that is a State nonmember insured bank or a State savings association and a subsidiary that is not a State nonmember insured bank or State savings association, if the total consolidated assets of all subsidiaries that are State nonmember insured banks or State savings associations—

''(aa) exceeds the total consolidated assets of all subsidiaries that are Federal depository institutions; and

''(bb) exceeds the total consolidated assets of all subsidiaries that are State member banks;

''(E) any subsidiary (other than a depository institution) of a bank holding company that is described in subparagraph (D);

''(F) any savings and loan holding company (other than a foreign bank)—

''(i) having less than $50,000,000,000 in total consolidated assets; and

''(ii) having—

''(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are State depository institutions; or

''(II) a subsidiary that is a Federal depository institution and a subsidiary that is a State depository institution, if the total consolidated assets of all subsidiaries that are State depository institutions exceed the total consolidated assets of all subsidiaries that are Federal depository institutions; and

''(G) any subsidiary (other than a depository institution) of a savings and loan holding company that is described in subparagraph (F);

''(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 having total consolidated assets of $50,000,000,000 or more, any bank holding company that is a foreign bank, and any subsidiary (other than a depository institution) of such a bank holding company;

''(G) any savings and loan holding company having total consolidated assets of $50,000,000,000 or more, any savings and loan holding company that is a foreign bank, and any subsidiary (other than a depository institution) of such a savings and loan holding company;

''(H) any bank holding company (other than a foreign bank)—

''(i) having less than $50,000,000,000 in total consolidated assets; and

''(ii) having—

''(I) a subsidiary that is an insured depository institution, if all such insured depository institutions are State member banks; or

''(II) a subsidiary that is a State member bank and a subsidiary that is not a State member bank, if the total consolidated assets of all subsidiaries that are State member banks—

''(aa) exceed the total consolidated assets of all subsidiaries that are Federal depository institutions; and

''(bb) exceed the total consolidated assets of all subsidiaries that are State nonmember insured banks and State savings associations; and

''(I) any subsidiary (other than a depository institution) of a bank holding company that is described in subparagraph (H).''.

(2) CERTAIN REFERENCES IN THE BANK HOLDING COMPANY ACT OF 1956.—

(A) COMPTROLLER OF THE CURRENCY.—On or after the transfer date, in the case of a bank holding company described in section 3(q)(1)(C) of the Federal Deposit Insurance Act, as amended by this Act, any reference in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) to the Board of Governors shall be deemed to be a reference to the Office of the Comptroller of the Currency.

(B) CORPORATION.—On or after the transfer date, in the case of a bank holding company described in section 3(q)(2)(D) of the Federal Deposit Insurance Act, as amended by this Act, any reference in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) to the Board of Governors shall be deemed to be a reference to the Corporation.

(C) RULE OF CONSTRUCTION.—Notwithstanding subparagraph (A) or (B), the Board of Governors shall retain all rulemaking authority under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).

(3) CONSULTATION IN HOLDING COMPANY RULEMAKING.—

(A) BANK HOLDING COMPANIES.—Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following:

''(h) CONSULTATION IN RULEMAKING.—Before proposing or adopting regulations under this Act that apply to bank holding companies having less than $50,000,000,000 in total consolidated assets, the Board of Governors shall consult with the Comptroller of the Currency and the Federal Deposit Insurance Corporation as to the terms of such regulations.''.

SA 3875. Mr. COBURN submitted an amendment intended to be proposed to amendment SA 3775 submitted by Mr. WYDEN (for himself and Mr. GRASSLEY) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. _____. STOP SECRET SPENDING ACT.

(a) SHORT TITLE.—This section may be cited as the ''Stop Secret Spending Act''.

(b) NOTICE REQUIREMENT.—Legislation that has been subject to a hotline notification may not pass by unanimous consent unless—

(1) the hotline notification has been posted on the public website of the Senate for at least 3 calendar days as provided in subsection (c); and

(2) signed statements from every Member of the Senate attesting that they have read the legislation (except for a sense of the Senate measure) and understand its impact including the cost have been submitted to and printed in the Congressional Record using the following format: ''I, Senator _____, have read [bill number] and understand its impact, including the cost, and support its passage.''.

(c) POSTING ON SENATE WEBPAGE.—At the same time as a hotline notification occurs with respect to any legislation, the Majority Leader shall post in a prominent place on the public webpage of the Senate a notice that the legislation has been hotlined and the legislation's number, title, link to full text, and sponsor and the estimated cost to implement and the number of new programs created by the legislation.

(d) LEGISLATIVE CALENDAR.—

(1) IN GENERAL.—The Secretary of the Senate shall establish for both the Senate Calendar of Business and the Senate Executive Calendar a separate section entitled ''Notice of Intent To Pass by Unanimous Consent''.

(2) CONTENT.—The section required by paragraph (1) shall—

(A) include any legislation posted as required by subsection (c) and the date the hotline notification occurred; and

(B) be updated as appropriate.

(3) REMOVAL.—Items included on the calendar under this subsection shall be removed from the calendar once passed by the Senate.

(e) EXCEPTIONS.—This section shall not apply—

(1) if a quorum of the Senate is present at the time the unanimous consent is propounded to pass the bill;

(2) to any legislation relating to an imminent or ongoing emergency, as jointly agreed to by the Majority and Minority Leaders; and

(3) to nominations.

(f) SUSPENSION.—The Presiding Officer shall not entertain any request to suspend this section by unanimous consent.

(g) HOTLINE NOTIFICATION DEFINED.—In this section, the term ''hotline notification'' means when the Majority Leader in consultation with the Minority Leader, provides notice of intent to pass legislation by unanimous consent by contacting each Senate office with a message on a special alert line (commonly referred to as the hotline) that provides information on what bill or bills the Majority Leader is seeking to pass through unanimous consent.

SA 3876. Mr. MENENDEZ (for himself and Mr. BURRIS) 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 372, line 2, strike ''bank.'' and insert the following: ''bank.

SEC. 343. WOMEN AND MINORITY ADVANCEMENT.

(a) DEFINITIONS.—In this section—

(1) the term ''covered person'' means a person that—

(A) has more than 50 employees; and

(B) makes a proposal to a financial agency for a contract that has a value of more than $50,000;

(2) the term ''Director'' means a Director of Minority and Women Advancement appointed under subsection (c);

(3) the term ''diversity'' includes racial, gender, and ethnic diversity;

(4) the term ''financial agency'' means—

(A) the Department of the Treasury;

(B) the Corporation;

(C) the Federal Housing Finance Agency;

(D) each of the Federal reserve banks;

(E) the Board of Governors;

(F) the National Credit Union Administration;

(G) the Commission;

(H) the Office of the Comptroller of the Currency;

(I) the Council;

(J) the Bureau; and

(K) the Office of National Insurance established under title V;

(5) the term ''financial agency administrator'' means the head of a financial agency;

(6) the term ''minority'' has the same meaning as in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note);

(7) the terms ''minority-owned business'' and ''women-owned business''—

(A) have the same meanings as in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)); and

(B) include financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services firms, underwriters, accountants, investment consultants, and providers of legal services; and

(8) the term ''Office'' means an Office of Minority and Women Advancement established under subsection (b).

(b) OFFICE OF MINORITY AND WOMEN ADVANCEMENT.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, each financial agency shall establish an Office of Minority and Women Advancement that shall—

(A) be responsible for all matters of the financial agency relating to diversity in management, employment, and business activities, including contracting and the coordination of technical assistance, in accordance with such standards and requirements as the Director of the Office shall establish; and

(B) advise the financial agency administrator of the impact of policies and regulations of the financial agency on minority-owned businesses, women-owned businesses, and diversity at such businesses.

(2) TRANSFER OF RESPONSIBILITIES.—Each financial agency that, before the date of enactment of this Act, assigned the responsibilities described in paragraph (1) (or comparable responsibilities) to another office of the financial agency shall ensure that such responsibilities are transferred to the Office.

(c) DIRECTOR.—

(1) IN GENERAL.—The head of the Office of a financial agency shall be the Director of Minority and Women Advancement, who shall be appointed by the financial agency administrator of the financial agency.

(2) REPORTING; TITLE.—Each Director shall report directly to the financial agency administrator and hold a title within the financial agency of the Director that is comparable to the title of other senior-level staff members of the financial agency who act in a managerial capacity and report directly to the financial agency administrator.

(3) DUTIES.—Each Director shall—

(A) ensure equal employment opportunity and encourage the racial, ethnic, and gender diversity of the workforce and senior management of the subject financial agency;

(B) work to increase—

(i) the participation rates of minority-owned businesses and women-owned businesses in the programs and contracts of the subject financial agency; and

(ii) the percentage of the amounts expended by the subject financial agency that is expended with minority-owned businesses and women-owned businesses; and

(C) provide guidance to the financial agency administrator to ensure that the policies and regulations of the financial agency strengthen minority-owned businesses and women-owned businesses.

(d) ADVANCEMENT IN ALL LEVELS OF BUSINESS ACTIVITIES.—Each Director shall develop and implement standards and procedures to ensure, to the maximum extent possible, the advancement of minorities and women, and the use of minority-owned businesses and women-owned businesses, in all activities of the financial agency at every level, including in procurement, insurance, and all types of contracting (including, as applicable, contracting for the issuance or guarantee of debt, equity, or security, the sale of assets, the management of assets, the making of equity investments, and the implementation of programs to promote economic recovery).

(e) CONTRACTS.—

(1) IN GENERAL.—Any process established by a financial agency for the review and evaluation of a contract proposal or the employment of a service provider shall give

consideration to the diversity of the covered person.

(2) WRITTEN ASSURANCE.—Each covered person shall include in the contract of the covered person with a financial agency a written assurance, in a form and manner that the Director of the financial agency shall prescribe, that the covered person will ensure, to the maximum extent possible, the advancement of minorities and women—

(A) in the workforce of the covered person; and

(B) as applicable, by any subcontractor of the covered person.

(3) REFERRAL SYSTEM.—Each Director shall establish a referral process by which the Director may refer a Federal contractor or subcontractor to the Office of Federal Contract Compliance Programs of the Department of Labor for further investigation, and appropriate enforcement, under Executive Order 11246 (42 U.S.C. 2000e note; relating to nondiscrimination in employment by Government contractors and subcontractors), or any successor thereto.

(4) APPLICABILITY.—This subsection shall apply to all contracts of a financial agency for services of any kind, including the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. Nothing in this subsection may be construed to affect the responsibilities or authority of the Office of Federal Contract Compliance Programs of the Department of Labor or the responsibilities of Federal contractors under Executive Order 11246 (42 U.S.C. 2000e note; relating to nondiscrimination in employment by Government contractors and subcontractors), or any successor thereto.

(f) REPORTS.—Not later than 90 days before the end of each fiscal year, the Director of each financial agency shall submit to Congress a report that contains detailed information describing the actions taken by the Director and the financial agency under this section, including—

(1) a statement—

(A) of the total amount paid by the financial agency to covered persons during—

(i) the period beginning on the date of the most recent report submitted by the financial agency under this subsection; or

(ii) in the case of the first report submitted under this subsection, the first fiscal year following the date of enactment of this Act; and

(B) that analyzes the amount described in subparagraph (A) by the type of population involved, as determined by the Director;

(2) the percentage of the amount described in paragraph (1) that was paid to minority-owned businesses and women-owned businesses, analyzed by the type of population involved, as determined by the Director;

(3) the successes achieved and challenges faced by the financial agency in operating outreach programs for minorities and women;

(4) any challenges that the financial agency may face in hiring and retaining qualified minority and women employees and contracting with qualified minority-owned businesses and women-owned businesses;

(5) the efforts that the financial agency has made to ensure that the financial agency recruits diverse talent; and

(6) any other information, findings, conclusions, or recommendations for legislative or financial agency action, as the Director determines appropriate.

(g) DIVERSITY IN FINANCIAL AGENCY WORKFORCE.—Each financial agency shall take affirmative steps to seek diversity in the workforce of the financial agency at all levels of the financial agency, consistent with the demographic diversity of the United States, including—

(1) targeted recruiting at historically Black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities;

(3) placing employment advertisements in newspapers and magazines oriented toward minorities and women;

(4) partnering with organizations that focus on developing opportunities for minorities and women, to place talented minorities and women in internships, summer employment, and full-time positions with the financial agency;

(5) where feasible, partnering with inner-city high schools, girls' high schools, and majority minority high schools, to establish or enhance financial literacy programs and provide mentoring;

(6) ensuring that women and minorities are included in the recruitment process, as staff or in the interview phase of the process; and

(7) using any other form of mass media communication that the Director determines is necessary.

(h) DIVERSITY REPORT CARDS.—

(1) REPORTING REQUIRED.—The Commission, in consultation with the Secretary of Labor and the Equal Employment Opportunity Commission, shall, by rule, require each issuer to disclose in the annual report of the issuer on Form 10–K under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), comparative percentage data, with separate categories for race, ethnicity, and gender, concerning—

(A) the 200 most highly compensated officers, executives, or employees of the issuer (excluding the members of the board of directors of the issuer);

(B) the total compensation of the 200 most highly compensated officers, executives, or employees of the issuer (excluding the members of the board of directors of the issuer);

(C) all employees of the issuer; and

(D) the total compensation of all employees of the issuer.

(2) TOTAL COMPENSATION.—For purposes of this subsection, total compensation shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.

SEC. 344. PRESERVING AND EXPANDING MINORITY DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—Section 308(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note) is amended by striking ''Director of the Office of Thrift Supervision'' and inserting '', the Chairman of the Board of Governors of the Federal Reserve System,''

(b) REPORT.—Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note) is amended by adding at the end the following:

''(c) REPORTS.—The Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System shall each submit an annual report to Congress containing a description of actions taken to carry out this section.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 3(g) of the Home Owners' Loan Act (12 U.S.C. 1462a(g)) is amended—

(1) in paragraph (1), by striking ''; and'' and inserting a period;

(2) by striking ''include'' and all that follows through ''any changes'' and inserting ''include a description of any changes''; and

(3) by striking paragraph (2).

SA 3877. 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 372, between lines 2 and 3, insert the following:

SEC. 343. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by inserting after section 114 (12 U.S.C. 4713) the following:

''SEC. 114A. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) DIRECTOR.—The term 'Director' means the Director of the Community Development Financial Institutions Fund.

''(2) ELIGIBLE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term 'eligible community development financial institution' means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

''(3) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term 'eligible community or economic development purpose'—

''(A) means any purpose described in section 108(b); and

''(B) includes the provision of community or economic development in low-income or underserved rural areas.

''(4) GUARANTEE.—The term 'guarantee' means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

''(5) LOAN.—The term 'loan' means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

''(6) MASTER SERVICER.—

''(A) IN GENERAL.—The term 'master servicer' means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

''(B) APPROVAL CRITERIA FOR MASTER SERVICERS.—The Secretary shall approve or deny any application to become a master servicer under the Program not later than 30 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—

''(i) loan administration, servicing, and loan monitoring;

''(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;

''(iii) managing regional or national originator communication systems and infrastructure;

''(iv) developing and implementing training and other risk management strategies on a regional or national basis; and

''(v) compliance monitoring, investor relations, and reporting.

''(7) PROGRAM.—The term 'Program' means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.

''(8) PROGRAM ADMINISTRATOR.—The term 'Program administrator' means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).

''(9) QUALIFIED ISSUER.—

''(A) IN GENERAL.—The term 'qualified issuer' means a community development financial institution (or any entity, including a State or local government, designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.

''(B) APPROVAL CRITERIA FOR QUALIFIED ISSUERS.—

''(i) IN GENERAL.—The Secretary shall approve a qualified issuer for a guarantee under the Program in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.

''(ii) TERMS AND QUALIFICATIONS.—A qualified issuer shall—

''(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

''(II) provide to the Secretary—

''(aa) an acceptable statement of the proposed sources and uses of the funds; and

''(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and

''(III) certify to the Secretary that the bonds or notes to be guaranteed are to be used for eligible community or economic development purposes.

''(C) DEPARTMENT OPINION; TIMING.—

''(i) DEPARTMENT OPINION.—Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the General Counsel of the Fund shall provide to the Secretary an opinion regarding compliance by the issuer with the requirements of the Program under this section.

''(ii) TIMING.—The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 45 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

''(10) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(11) SERVICER.—The term 'servicer' means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

''(b) GUARANTEES AUTHORIZED.—The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

''(1) for eligible community or economic development purposes; or

''(2) to refinance loans or notes issued for such purposes.

''(c) GENERAL PROGRAM REQUIREMENTS.—

''(1) IN GENERAL.—A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

''(2) RELENDING ACCOUNT.—Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

''(3) LIMITATIONS ON UNPAID PRINCIPAL BALANCES.—The proceeds of guaranteed bonds or notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

''(A) community or economic development loans;

''(B) a relending account, to the extent authorized under paragraph (2); or

''(C) a risk-share pool established under subsection (d).

''(4) REPAYMENT.—If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

''(5) PROHIBITED USES.—The Secretary shall, by regulation—

''(A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and

''(B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—

''(i) the qualified issuer; or

''(ii) any recipient of amounts from the guarantee of a bond or note.

''(d) RISK-SHARE POOL.—Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to not less than 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

''(e) GUARANTEES.—

''(1) IN GENERAL.—A guarantee issued under the Program shall—

''(A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;

''(B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Government-guaranteed bonds, and satisfactory to the Secretary;

''(C) represent the full faith and credit of the United States; and

''(D) not exceed 30 years.

''(2) LIMITATIONS.—

''(A) ANNUAL NUMBER OF GUARANTEES.—The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

''(B) GUARANTEE AMOUNT.—The Secretary may not guarantee any amount under the Program equal to less than $100,000,000, but the total of all such guarantees in any fiscal year may not exceed $1,000,000,000.

''(f) SERVICING OF TRANSACTIONS.—

''(1) IN GENERAL.—To maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified Program administrators, bond servicers, and a master servicer.

''(2) DUTIES OF PROGRAM ADMINISTRATOR.—The duties of a Program administrator shall include—

''(A) approving and qualifying eligible community development financial institution applications for participation in the Program;

''(B) compliance monitoring;

''(C) bond packaging in connection with the Program; and

''(D) all other duties and related services that are customarily expected of a Program administrator.

''(3) DUTIES OF SERVICER.—The duties of a servicer shall include—

''(A) billing and collecting loan payments;

''(B) initiating collection activities on past-due loans;

''(C) transferring loan payments to the master servicing accounts;

''(D) loan administration and servicing;

''(E) systematic and timely reporting of loan performance through remittance and servicing reports;

''(F) proper measurement of annual outstanding loan requirements; and

''(G) all other duties and related services that are customarily expected of servicers.

''(4) DUTIES OF MASTER SERVICER.—The duties of a master servicer shall include—

''(A) tracking the movement of funds between the accounts of the master servicer and any other servicer;

''(B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;

''(C) monitoring the collection comments and foreclosure actions;

''(D) aggregating the reporting and distribution of funds to trustees and investors;

''(E) removing and replacing a servicer, as necessary;

''(F) loan administration and servicing;

''(G) systematic and timely reporting of loan performance compiled from all bond servicers' reports;

''(H) proper distribution of funds to investors; and

''(I) all other duties and related services that are customarily expected of a master servicer.

''(g) FEES.—

''(1) IN GENERAL.—A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Director, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

''(2) PAYMENT.—A qualified issuer shall pay the fee required under this subsection on an annual basis.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

''(2) USE OF FEES.—To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Director may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

''(i) INVESTMENT IN GUARANTEED BONDS INELIGIBLE FOR COMMUNITY REINVESTMENT ACT PURPOSES.—Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901).

''(j) ADMINISTRATION.—

''(1) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations to carry out this section.

''(2) IMPLEMENTATION.—Not later than 240 days after the date of enactment of this section, the Secretary shall implement this section.

''(k) TERMINATION.—This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.''.

SEC. 344. QUALIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION BONDS.

(a) QUALIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION BONDS TREATED AS STATE AND LOCAL BONDS.—Section 150 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) QUALIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION BONDS.—For purposes of this part and section 103—

''(1) IN GENERAL.—A qualified community development financial institution bond shall be treated as a bond of a political subdivision of a State.

''(2) QUALIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION BOND.—The term 'qualified community development financial institution bond' means any bond—

''(A) issued by a qualified community development financial institution (or on behalf of such an institution by a State or local government),

''(B) designated as a qualified community development financial institution bond for purposes of this subsection, and

''(C) issued as part of an issue 95 percent or more of the net proceeds of which are to be used for an eligible community or economic development purpose (as defined in section 114A of the Community Development Banking and Financial Institutions Act).

''(3) QUALIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term 'qualified community development financial institution' means any organization—

''(A) which is described in section 501(c)(3) and exempt from tax under section 501(a), and

''(B) which is a qualified issuer as defined in section 114A of the Community Development Banking and Financial Institutions Act of 1994, or would be a qualified issuer but for its designation of a State or local government to issue bonds on its behalf.

''(4) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—

''(A) IN GENERAL.—The maximum aggregate face amount of bonds which may be designated under paragraph (2)(B) by any issuer shall not exceed the limitation amount allocated to such issuer under subparagraph (C).

''(B) NATIONAL LIMITATION.—There is a national qualified community development financial institution bond limitation of $500,000,000.

''(C) ALLOCATION OF NATIONAL LIMITATION.—The national qualified community development financial institution bond limitation shall be allocated by the Secretary to qualified issuers receiving guarantees under section 114A of the Community Development Banking and Financial Institutions Act of 1994.

''(5) BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—Bonds which are part of an issue which meets the requirements of paragraph (2) shall not be treated as private activity bonds.''.

(b) NO FEDERAL GUARANTEE.—Subparagraph (A) of section 149(b)(3) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''or'' at the end of clause (iii);

(2) by striking the period at the end of clause (iv) and inserting '', or''; and

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

''(v) any guarantee of a qualified community development financial institution bond provided by the Community Development Financial Institution Fund.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of enactment of this Act.

SA 3878. Mr. CASEY (for himself, Mr. BROWN of Ohio, and 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 1044, between lines 2 and 3, insert the following:

SEC. 9___. STUDY ON TRANSACTION FEE.

(a) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission, in coordination with the Department of the Treasury, shall conduct a study on the implementation of a transaction fee on all security-based transactions, including swap and security-based swap transactions (except those transactions that are primarily for the purpose of hedging or mitigating risk), stock, debt instruments, and any other security that the heads of the Federal agencies described in this subsection determine to be appropriate to be included in the study.

(b) PURPOSE.—The purpose of the study shall be to assess—

(1) past experiences with transaction fees, with an emphasis on fee avoidance or behavior modification, migration of capital, and impact on individual investors and small and medium-sized businesses;

(2) the advantages and disadvantages of the implementation of the transaction fee in the United States alone, as compared to the introduction of the fee on a global basis;

(3) the potential to generate sufficient revenue to reduce the deficit, fund job creation, and meet the humanitarian and global development obligations of the United States;

(4) how a transaction fee needs to be designed in order to mitigate any negative side effects that may result from the indirect assessment on the raising of capital;

(5) the impact, if any, a transaction fee would have on the practice of day trading;

(6) to what extent a financial transaction fee would contribute to the stabilization of the financial markets in terms of the effect of the fee on speculation and on transparency;

(7) whether a transaction fee would prevent a future financial crisis by targeting certain types of risky transactions (which transactions shall be determined by the agencies conducting the study);

(8) the different transaction fee options, with a particular focus on—

(A) the financial transactions tax and financial activities tax, as described in the report entitled ''International Monetary Fund Report: A Fair and Substantial Contribution by the Financial Sector''; and

(B) implementing the transaction fee on individuals earning more than $250,000 and corporations;

(9) whether the transaction fee would assist in building healthy capital, ensuring the ability of the banking system to finance real economy investments; and

(10) whether excessive risk-taking is or would be prevented through implementation of a transaction fee.

(c) PUBLIC PARTICIPATION.—The study described in subsection (a) shall be carried out in a manner to provide to the public an adequate period of time to provide comments on the implementation of a transaction fee.

(d) REPORT.—Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission, in coordination with the Department of the Treasury, shall submit to Congress a report that describes the results of the study.

SA 3879. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 in title I, insert the following:

SEC. ___. LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS.

(a) DEFINITIONS.—

(1) GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS.—The term ''generally applicable leverage capital requirements'' means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS.—The term ''generally applicable risk-based capital requirements'' means—

(A) the risk-based capital requirements as established by the appropriate Federal banking agencies to apply to insured depository institutions under the agency's Prompt Corrective Action regulations that implement section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(b) MINIMUM CAPITAL REQUIREMENTS.—

(1) MINIMUM LEVERAGE CAPITAL REQUIREMENTS.—The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies identified under section 113. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any

capital requirements the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(2) MINIMUM RISK-BASED CAPITAL REQUIREMENTS.—The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies identified under section 113. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(3) CAPITAL REQUIREMENTS TO ADDRESS ACTIVITIES THAT POSE RISKS TO THE FINANCIAL SYSTEM.—

(A) IN GENERAL.—Subject to the recommendations of the Council, in accordance with section 120, the Federal banking agencies shall develop capital requirements applicable to all institutions covered by this section that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(B) CONTENT.—Such rules shall address, at a minimum, the risks arising from—

(i) significant volumes of activity in derivatives, securitized products purchased and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

(ii) concentrations in assets for which the values presented in financial reports are based on models rather than historical cost or prices deriving from deep and liquid 2-way markets; and

(iii) concentrations in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.

SA 3880. Mr. BYRD (for himself and Mr. ROCKEFELLER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title IX, add the following:

SEC. 919C. PENALTIES FOR FAILURE TO DISCLOSE HEALTH AND SAFETY LITIGATION, VIOLATIONS, AND IMPACT INFORMATION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 21A the following new section:

''SEC. 21B. HEALTH AND SAFETY DISCLOSURE VIOLATIONS.

''(a) FINDINGS.—Congress finds the following:

''(1) This Act requires issuers of securities to disclose material facts regarding—

''(A) pending litigation;

''(B) unsafe or unhealthy conditions in a high-risk workplace that may reasonably be expected to cause the issuer to face costly wrongful death actions from the heirs of the deceased;

''(C) unsafe or unhealthy conditions in a high-risk workplace, or significant violations of law in such a workplace, that may reasonably be expected to cause reported financial information not to be necessarily indicative of future financial conditions or future operating results; and

''(D) events, trends, or uncertainties that may change the relationship between costs and revenues.

''(2) In numerous industries, including high-risk industries such as coal mining and oil exploration, health and safety conditions have long been incompletely and inconsistently disclosed, discussed, or analyzed by corporations.

''(3) Investors and the public have a right to know, and a reasonable expectation to remained informed, about significant safety and health conditions that could imperil the workforce of publicly-traded corporations, carrying odious consequences for workers, families, and communities, and that can lead to the abrogation of contracts, environmental or other tort liabilities, and tarnished corporate reputations.

''(b) PURPOSE.—The purpose of this section is to strengthen the maintenance of fair and honest markets by requiring disclosure of certain health and safety information and by authorizing elevated penalties for failures to disclose certain categories of information regarding health and safety conditions or violations, given that such failures have too often heretofore been unaddressed.

''(c) JUDICIAL ACTIONS AUTHORIZED.—

''(1) RELIEF AND PENALTIES.—Whenever it shall appear that any issuer has violated subsection (d), the Commission or any shareholder of the issuer may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose—

''(A) equitable relief for the complainant, to be provided by the issuer; and

''(B) a civil penalty to be paid by the senior executive officers or the members of the board of directors of the subject issuer—

''(i) who knew about such violation; or

''(ii) whose duties and decisions affected matters regarding production or safety and who therefore had reason to know about such violation, barring malfeasance by other directors, officers, employees, or agents of the subject issuer.

''(2) COSTS.—Whenever a court issues an order sustaining a shareholder's charges under paragraph (1), a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) that have been reasonably incurred by the shareholder for, or in connection with, the institution and prosecution of such proceedings, as determined by the court, shall be assessed against the issuer. These costs shall be assessed regardless of the amount or means of relief or penalties imposed on the issuer or its directors, officers, employees, or agents.

''(d) HEALTH AND SAFETY-RELATED DISCLOSURE.—

''(1) DUTY TO DISCLOSE.—At least annually, an issuer shall disclose to the Commission and the shareholders the information required under paragraph (2).

''(2) REQUIRED DISCLOSURES.—The disclosures required under this paragraph are the following:

''(A) Any pending litigation concerning a health or safety condition or violation under Federal or State law involving the issuer, other than ordinary, routine litigation that is incidental to the business of the issuer, as determined by the Commission in consultation with the Secretary of Labor.

''(B) Any significant health or safety condition, or significant health or safety violation, at any business unit of the issuer in which routine activities pose risk of loss of life.

''(C) Any significant health or safety condition, or significant health or safety violation, at any business unit of the issuer in which routine activities pose risk of accidents or fatalities, injuries, or illnesses, the occurrence of which could cause reported financial information not to be necessarily indicative of future financial conditions of the issuer, or which could cause a negative effect on operating results of the issuer or any subsidiaries thereof.

''(D) Any trend in health or safety conditions or violations under Federal law, at any business unit of the issuer, that may change the relationship between costs and revenues of the issuer or any subsidiaries thereof.

''(e) MEANS AND AMOUNT OF EQUITABLE RELIEF, DAMAGES, AND PENALTIES.—

''(1) MEANS AND AMOUNT OF EQUITABLE RELIEF AND DAMAGES.—The court shall determine the means of equitable relief for a violation of subsection (d), which may include the immediate disclosure of significant health or safety conditions or significant health or safety violations. If the court determines that a shareholder has sustained damages, the court may assess the damages against the issuer.

''(2) AMOUNT OF CIVIL PENALTY.—

''(A) JUDICIAL DETERMINATION.—The court shall determine the civil penalty for a violation of subsection (d) in light of the facts and circumstances.

''(B) AMOUNT OF PENALTY.—Unless determined otherwise in accordance with subparagraph (A), the civil penalty for a violation of subsection (d) shall be equal to not less than 3 times the amount that may be imposed under other State or Federal law in connection with the underlying safety or health conditions or violations that are required to be disclosed under this title.

''(3) PRIVATE ACTIONS.—If a person other than the United States prevails on a claim alleging a violation of subsection (d), the person shall be entitled to recover 3 times the amount of damages sustained by the person, as determined by the court, in light of the facts and circumstances.

''(f) PROCEDURES FOR COLLECTION.—

''(1) PAYMENT OF PENALTY TO TREASURY.—A civil penalty imposed under this section shall be payable into the Treasury of the United States.

''(2) COLLECTION OF PENALTIES.—If a person upon whom a civil penalty under this section is imposed fails to pay such penalty within the time prescribed in the order of the court, the Commission may refer the matter to the Attorney General of the United States, who shall recover such penalty by action in the appropriate United States district court.

''(3) REMEDY NOT EXCLUSIVE.—An action authorized by this section may be brought in addition to any other actions that the Commission, the Attorney General, or any shareholder is entitled to bring.

''(4) JURISDICTION AND VENUE.—For purposes of section 27, an action under this section shall be an action to enforce a liability or a duty created by this title.

''(g) DEFINITIONS.—

''(1) IN GENERAL.—The Commission, in consultation with the Secretary of Labor, shall issue rules to define the terms used in this section for which the Commission determines a definition to be necessary.

''(2) DEFINITIONS.—In this section:

''(A) PENDING LITIGATION.—The term 'pending litigation' includes a civil action or administrative proceeding for a penalty for

violating a Federal or State health and safety law that—

''(i) is being contested before an administrative law judge under the Occupational Safety and Health Review Commission or the Federal Mine Safety and Health Review Commission; or

''(ii) is being otherwise contested or appealed under a State review board or other body.

''(B) SIGNIFICANT HEALTH OR SAFETY CONDITION.—The term 'significant health or safety condition' means a condition that a certified worker or manager could identify as reasonably likely to be cited, were the condition to be observed by a Federal inspector, as—

''(i) a significant and substantial health or safety violation under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.);

''(ii) a serious or repeated violation under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); or

''(iii) another health- or safety-related violation carrying a high degree of gravity under Federal law.

''(C) SIGNIFICANT HEALTH OR SAFETY VIOLATION.—The term 'significant health or safety violation' means—

''(i) a significant and substantial health or safety violation under the Federal Mine Safety and Health Act of 1977;

''(ii) a serious or repeated violation under the Occupational Safety and Health Act of 1970; or

''(iii) another health- or safety-related violation carrying a high degree of gravity under State or Federal law.''.

SA 3881. 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 1062, after line 25, insert the following:

(e) OFFICE OF SERVICE MEMBER AFFAIRS.—

(1) ESTABLISHMENT.—The Director shall establish within the Bureau the Office of Service Member Affairs.

(2) FUNCTIONS.—The Office of Service Member Affairs shall have such powers and duties as the Director may delegate to that Office, with respect to the drafting and enforcement of any special consumer financial protection rules that apply to members of the Armed Forces.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the Bureau for Service Member Affairs, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(4) DEFINITION.—As used in this subsection, the term ''member of the Armed Forces'' means any member of the United States Armed Forces and any member of the National Guard or Reserves.

SA 3882. Mr. CORKER (for himself, Mr. GREGG, Mr. SHELBY, Mrs. HUTCHISON, Mr. LEMIEUX, and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1045, strike line 12 and all that follows through ''**SEC. 942.**'' on page 1052, line 3, and insert the following:

(b) STUDY ON RISK RETENTION.—

(1) STUDY.—

(A) IN GENERAL.—The Board of Governors, in coordination and consultation with the Comptroller of the Currency, the Corporation, the Federal Housing Finance Agency, and the Commission, shall conduct a study of the asset-backed securitization process.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Board of Governors shall evaluate—

(i) the separate and combined impact of—

(I) requiring loan originators or securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party; including—

(aa) whether existing risk retention requirements such as contractual representations and warranties, and statutory and regulatory underwriting and consumer protection requirements are sufficient to ensure the long-term accountability of originators for loans they originate; and

(bb) methodologies for establishing additional statutory credit risk retention requirements;

(II) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board, as well as any other statements issued before or after the date of enactment of this section the Federal banking agencies determine to be relevant;

(ii) the impact of the factors described under subsection (i) of this section on—

(I) different classes of assets, such as residential mortgages, commercial mortgages, commercial loans, auto loans, and other classes of assets;

(II) loan originators;

(III) securitizers;

(IV) access of consumers and businesses to credit on reasonable terms.

(2) REPORT.—Not later than 18 months after the date of enactment of this section, the Board of Governors shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).

SEC. 942. RESIDENTIAL MORTGAGE UNDERWRITING STANDARDS.

(a) STANDARDS ESTABLISHED.—Notwithstanding any other provision of this Act or any other provision of Federal, State, or local law, the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, shall jointly establish specific minimum standards for mortgage underwriting, including—

(1) a requirement that the mortgagee verify and document the income and assets relied upon to qualify the mortgagor on the residential mortgage, including the previous employment and credit history of the mortgagor;

(2) a down payment requirement that—

(A) is equal to not less than 5 percent of the purchase price of the property securing the residential mortgage; and

(B) in the case of a first lien residential mortgage loan with an initial loan to value ratio that is more than 80 percent and not more than 95 percent, includes a requirement for credit enhancements, as defined by the Federal banking agencies, until the loan to value ratio of the residential mortgage loan amortizes to a value that is less than 80 percent of the purchase price;

(3) a method for determining the ability of the mortgagor to repay the residential mortgage that is based on factors including—

(A) all terms of the residential mortgage, including principal payments that fully amortize the balance of the residential mortgage over the term of the residential mortgage; and

(B) the debt to income ratio of the mortgagor; and

(4) any other specific standards the Federal banking agencies jointly determine are appropriate to ensure prudent underwriting of residential mortgages.

(b) UPDATES TO STANDARDS.—The Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development—

(1) shall review the standards established under this section not less frequently than every 5 years; and

(2) based on the review under paragraph (1), may revise the standards established under this section, as the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, determine to be necessary.

(c) COMPLIANCE.—It shall be a violation of Federal law—

(1) for any mortgage loan originator to fail to comply with the minimum standards for mortgage underwriting established under subsection (a) in originating a residential mortgage loan;

(2) for any company to maintain an extension of credit on a revolving basis to any person to fund a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan funded by such credit was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a); or

(3) for any company to purchase, fund by assignment, or guarantee a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a).

(d) IMPLEMENTATION.—

(1) REGULATIONS REQUIRED.—The Federal banking agencies, in consultation with the Federal Housing Finance Agency, shall issue regulations to implement subsections (a) and (c), which shall take effect not later than 270 days after the date of enactment of this Act.

(2) REPORT REQUIRED.—If the Federal banking agencies have not issued final regulations under subsections (a) and (c) before the date that is 270 days after the date of enactment of this Act, the Federal banking agencies shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that—

(A) explains why final regulations have not been issued under subsections (a) and (c); and

(B) provides a timeline for the issuance of final regulations under subsections (a) and (c).

(e) ENFORCEMENT.—Compliance with the rules issued under this section shall be enforced by—

(1) the primary financial regulatory agency of an entity, with respect to an entity subject to the jurisdiction of a primary financial regulatory agency, in accordance with the statutes governing the jurisdiction of the primary financial regulatory agency over the entity and as if the action of the primary financial regulatory agency were taken under such statutes; and

(2) the Bureau, with respect to a company that is not subject to the jurisdiction of a primary financial regulatory agency.

(f) RULE OF CONSTRUCTION.—Nothing in this section may be construed to permit the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation to make or guarantee a residential mortgage loan that does not meet the minimum underwriting standards established under this section.

(g) DEFINITIONS.—In this section, the following definitions shall apply:

(1) COMPANY.—The term ''company''—

(A) has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)); and

(B) includes a sole proprietorship.

(2) MORTGAGE LOAN ORIGINATOR.—The term ''mortgage loan originator'' means any company that takes residential mortgage loan applications and offers or negotiates terms of residential mortgage loans.

(3) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan''—

(A) means any extension of credit primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) does not include a mortgage loan for which mortgage insurance is provided by the Department of Veterans Affairs.

(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 3883. Ms. SNOW (for herself and Mr. PRYOR), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. SMALL BUSINESS FAIRNESS AND REGULATORY TRANSPARENCY.

(a) PANEL REQUIREMENT.—Section 609(d) of title 5, United States Code, is amended by striking ''means the'' and all that follows and inserting the following: ''means—

''(1) the Environmental Protection Agency;

''(2) the Consumer Financial Protection Bureau of the Federal Reserve System; and

''(3) the Occupational Safety and Health Administration of the Department of Labor.''.

(b) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603 of title 5, United States Code, is amended by adding at the end the following:

''(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

''(A) any projected increase in the cost of credit for small entities;

''(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

''(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

''(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

''(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

''(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).''.

(c) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604(a) of title 5, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' at the end;

(2) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(6) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.''.

SA 3884. Ms. CANTWELL (for herself, Mr. MCCAIN, Mr. KAUFMAN, Mr. HARKIN, Mr. FEINGOLD, and Mr. SANDERS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title I, add the following:

SEC. 171. LIMITATIONS ON BANK AFFILIATIONS.

(a) LIMITATION ON AFFILIATION.—The Banking Act of 1933 (12 U.S.C. 221a et seq.) is amended by inserting before section 21 the following:

''SEC. 20. Beginning 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, no member bank may be affiliated, in any manner described in section 2(b), with any corporation, association, business trust, or other similar organization that is engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation stocks, bonds, debenture, notes, or other securities, except that nothing in this section shall apply to any such organization which shall have been placed in formal liquidation and which shall transact no business, except such as may be incidental to the liquidation of its affairs.''.

(b) LIMITATION ON COMPENSATION.—The Banking Act of 1933 (12 U.S.C. 221 et seq.) is amended by inserting after section 31 the following:

''SEC. 32. Beginning 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, no officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve simultaneously as an officer, director, or employee of any member bank, except in limited classes of cases in which the Board of Governors of the Federal Reserve System may allow such service by general regulations when, in the judgment of the Board of Governors, it would not unduly influence the investment policies of such member bank or the advice given to customers by the member bank regarding investments.''.

(c) PROHIBITING DEPOSITORY INSTITUTIONS FROM ENGAGING IN INSURANCE-RELATED ACTIVITIES.—

(1) IN GENERAL.—Beginning 1 year after the date of enactment of this Act, and notwithstanding any other provision of law, in no case may a depository institution engage in the business of insurance or any insurance-related activity.

(2) DEFINITION.—As used in this section, the term ''business of insurance'' means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

SA 3885. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 370, strike lines 11 through 13 and insert the following:

(b) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 333. STUDY ON THE IMPACT OF EXCLUDING CORE DEPOSITS FROM TREATMENT AS BROKERED DEPOSITS.

(a) STUDY.—The Board of Governors shall conduct a study to evaluate—

(1) the treatment of core deposits as brokered deposits for the purpose of calculating the insurance premiums of banks;

(2) the potential impact on the Deposit Insurance Fund of ceasing to treat core deposits as brokered deposits;

(3) an assessment of the merits and drawbacks of the treatment of core deposits as brokered deposits, with respect to the economy and banking sector of the United States;

(4) the potential stimulative effect on local economies of excluding core deposits from treatment as brokered deposits; and

(5) the competitive parity between large institutions and community banks that

could result from excluding core deposits from treatment as brokered deposits.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Board of Governors shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study under subsection (a) that includes legislative recommendations, if any, to address competitive imbalances as a result of the treatment of core deposits as brokered deposits.

SA 3886. Mr. ROCKEFELLER (for himself and Mr. BYRD) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title IX, add the following:

SEC. 919C. REPORTING REQUIREMENTS REGARDING COAL OR OTHER MINE SAFETY.

(a) REPORTING MINE SAFETY INFORMATION.—Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o) and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after the date of enactment of this Act, the following information for the time period covered by such report:

(1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator—

(A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration;

(B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b));

(C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d));

(D) the total number of flagrant violations under section 110(b) of such Act (30 U.S.C. 820(b));

(E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a)); and

(F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.).

(2) A list of such coal or other mines that receive written notice from the Mine Safety and Health Administration of—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

(b) REPORTING SHUTDOWNS AND PATTERNS OF VIOLATIONS.—Beginning on and after the date of enactment of this Act, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report on Form 8–K (or any successor form), as required by the Commission, disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:

(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after the date of enactment of this Act.

(d) COMMISSION AUTHORITY.—

(1) ENFORCEMENT.—A violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of such Act or such rules or regulations.

(2) RULES AND REGULATIONS.—The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

(e) DEFINITIONS.—In this section—

(1) the terms ''issuer'' and ''securities laws'' have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term ''coal or other mine'' means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and

(3) the term ''operator'' has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

SA 3887. Mr. CARPER (for himself, Mr. ENSIGN, Mr. GREGG, Mr. CORKER, and Mr. JOHANNS) 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 3888. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 3217 submitted by Mrs. FEINSTEIN and intended to be proposed to the amendment SA 2786 proposed by Mr. REID (for himself, Mr.BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, entitled The Patient Protection and Affordable Care Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. DELAY OF IMPLEMENTATION.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency shall delay the implementation of the final rule entitled ''Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet; Notice of Availability; Final Rule'' (73 Fed. Reg. 21692 (April 22, 2008)), and the final rule entitled ''Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program'', signed by the Administrator on April 22, 2010, in each State until such time as accredited certified renovator classes have been held in the State, for a period of at least 1 year, to train contractors in practices necessary for compliance with the final rules, as determined by the Administrator.

(b) NOTIFICATION.—The Administrator shall—

(1) monitor each State to determine when classes described in subsection (a) are offered in the State; and

(2) provide to each Member of Congress representing the State a notification describing—

(A) the location and time of each such class held in the State; and

(B) the date on which the classes have been held for the 1-year period described in subsection (a).

SA 3889. Mr. AKAKA (for himself, Mr. MENENDEZ, and Mr. DURBIN) 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 942, strike line 10 and all that follows through page 951, line 13, and insert the following:

SEC. 913. ESTABLISHMENT OF A FIDUCIARY DUTY FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS, AND HARMONIZATION OF REGULATION.

(a) IN GENERAL.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by this Act, is amended—

(A) by redesignating subsection (i) (relating to security-based swap agreements), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A–455), as subsection (j); and

(B) by adding at the end the following:

''(m) STANDARD OF CONDUCT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission shall promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

''(2) DISCLOSURE OF RANGE OF PRODUCTS OFFERED.—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission shall by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

''(3) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

''(A) receives personalized investment advice about securities from a broker or dealer; and

''(B) uses such advice primarily for personal, family, or household purposes.

''(n) OTHER MATTERS.—The Commission shall—

''(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

''(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.''.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 is amended by adding at the end the following new subsections:

''(f) STANDARD OF CONDUCT.—

''(1) IN GENERAL.—The Commission shall promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under paragraph (1) and (2) of section 206 of this Act when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term 'customer' that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

''(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

''(A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and

''(B) uses such advice primarily for personal, family, or household purposes.

''(g) OTHER MATTERS.—The Commission shall—

''(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

''(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.''.

(b) HARMONIZATION OF ENFORCEMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934, as amended by subsection (a)(1), is further amended by adding at the end the following new subsection:

''(m) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

''(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

''(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.''.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by subsection (a)(2), is further amended by adding at the end the following new subsection:

''(h) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

''(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

''(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment advisor under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.''.

SA 3890. Mr. BAYH (for himself and Mr. MERKLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 61, after line 24, insert the following:

SEC. 122. INTERNATIONAL REGULATORY COORDINATION FOR THE REGULATION AND RESOLUTION OF FINANCIAL INSTITUTIONS.

(a) DEFINITIONS.—As used in this section—

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(2) LARGE, COMPLEX FINANCIAL INSTITUTION.—The term ''large, complex financial institution'' means a bank holding company or company treated as a bank holding company for the purposes of the section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), a company subject to supervision of the Board of Governors under section 113, or such other financial company as the Council may determine, which has the potential to threaten the financial stability of the United States owing to the size or interconnectedness of the institution across more than 1 national jurisdiction.

(3) MULTILATERAL FINANCIAL FORUMS.—The term ''multilateral financial forums'' means the International Monetary Fund, the G20, the Financial Stability Board, the Bank for International Settlement (including the Basel Committee on Bank Supervision), the International Organization of Securities Commissions, the International Association of Insurance Supervisors, the International Association of Deposit Insurers, the International Accounting Standard Board, and other relevant institutions and committees as the Council may determine.

(b) BIANNUAL REPORTS.—

(1) REPORTS.—Not later than January 30, 2011, and biannually thereafter, the Council shall submit public reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the status of and participation of the United States in international coordination of financial services regulation and supervision efforts at multilateral financial forums.

(2) TESTIMONY.—At the request of the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives, the Secretary and representatives of the relevant regulatory agencies charged with international coordination matters, including the agencies charged with the coordination of capital and resolution matters and markets oversight, shall appear before the committee to provide testimony on the reports submitted under paragraph (1).

(c) CONTENTS OF REPORT.—Each report submitted under subsection (b) shall contain—

(1) an update on the status of and participation of the United States in international coordination efforts at the multilateral financial forums to set minimum standards for the regulation and supervision of financial services regulation, in particular with

respect to large, complex financial institutions, including—

(A) standards on financial firms, including, as relevant—

(i) capital and leverage requirements;

(ii) liquidity requirements;

(iii) consumer protection;

(iv) resolution plans;

(v) contingent capital;

(vi) credit exposure requirements;

(vii) activity limits;

(viii) concentration limits;

(ix) size limits;

(x) public disclosure;

(xi) market transparency;

(xii) executive compensation;

(xiii) risk management; and

(xiv) any other relevant regulatory areas affecting banking, securities, derivatives, insurance, and other financial services;

(B) standards on financial markets, including—

(i) credit and lending markets;

(ii) securities and derivatives markets;

(iii) insurance markets; and

(iv) any other financial service markets, including ensuring the necessary public transparency, integrity, and stability;

(C) standards on the supervision of financial firms and markets, including ensuring national and international regulators have—

(i) adequate access to real-time information;

(ii) engaged in adequate coordination with international counterparts; and

(iii) made adequate preparation for crisis management; and

(D) an evaluation of—

(i) any gaps in the international coordination of regulation and supervision of financial services; and

(ii) whether international coordination adequately permits individual countries to employ a diversity of regulatory approaches in practice without permitting regulatory arbitrage or other pressures to relax necessary protections;

(2) an update on the status of and participation of the United States in international coordination efforts at the multilateral financial forums to develop adequate cross-border bankruptcy and resolution regimes, specifically for large, complex financial institutions, including the development and maintenance of—

(A) legal regimes at the national and international level that—

(i) enforce market discipline;

(ii) deter explicit or implicit reliance on the public treasury; and

(iii) equitably share burdens in restructuring credit across 1 or more bankruptcy or resolution regimes;

(B) information systems and regulator coordination, including—

(i) maps of global exposures and cross-exposures emanating from large complex financial institutions;

(ii) charts of the legal structure and regulatory regimes governing various subsidiaries and affiliates of large complex financial institutions; and

(iii) contingency plans for communication and real-time crisis management with respect to the possible failure of each relevant key large complex financial institution; and

(C) information systems to—

(i) detect and promptly respond to the insolvency or illiquidity of 1 or more foreign or United States large complex financial institutions or markets; and

(ii) mitigate the direct and indirect risks to the economy of the United States from the failure of the institution or market;

(3) the dissenting or divergent views of any members of the Council; and

(4) any other updates the Council determines is appropriate.

(d) CONGRESSIONAL CONSULTATION.—

(1) IN GENERAL.—In addition to any other consultation required by law, before initiating negotiations to enter into any international agreement on financial regulation, supervision, or resolution, and from time to time during such negotiations, the Secretary and representatives of the relevant regulatory agencies shall consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of financial, fiscal, and economic stability in the United States; and

(C) the implementation of the agreement, including any effect the agreement may have on existing Federal or State laws.

(e) STUDY ON INTERNATIONAL COORDINATION AND DIVERSITY.—Not later than September 30, 2011, the Council shall submit a report to Congress, including any dissenting or divergent views of any members of the Council, regarding risks to the financial, fiscal, and economic stability of the United States presented by foreign or United States large complex financial institutions.

SA 3891. Mr. CASEY (for himself, Mrs. GILLIBRAND, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X appropriate place, insert the following:

SEC. 1078. EMERGENCY MORTGAGE RELIEF.

(a) USE OF TARP FUNDS.—Using the authority available under sections 101(a) and 115(a) of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury shall transfer to the Secretary of Housing and Urban Development $3,000,000,000, and the Secretary of Housing and Urban Development shall credit such amount to the Emergency Homeowners' Relief Fund, which such Secretary shall establish pursuant to section 107 of the Emergency Housing Act of 1975 (12 U.S.C. 2706), as such Act is amended by this section, for use for emergency mortgage assistance in accordance with title I of such Act.

(b) REAUTHORIZATION OF EMERGENCY MORTGAGE RELIEF PROGRAM.—Title I of the Emergency Housing Act of 1975 is amended—

(1) in section 103 (12 U.S.C. 2702)—

(A) in paragraph (2)—

(i) by striking ''have indicated'' and all that follows through ''regulation of the holder'' and inserting ''have certified'';

(ii) by striking ''(such as the volume of delinquent loans in its portfolio)''; and

(iii) by striking '', except that such statement'' and all that follows through ''purposes of this title''; and

(B) in paragraph (4), by inserting ''or medical conditions'' after ''adverse economic conditions'';

(2) in section 104 (12 U.S.C. 2703)—

(A) in subsection (b), by striking '', but such assistance'' and all that follows through the period at the end and inserting the following: ''. The amount of assistance provided to a homeowner under this title shall be an amount that the Secretary determines is reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment, except that the aggregate amount of such assistance provided for any homeowner shall not exceed $50,000.'';

(B) in subsection (d), by striking ''interest on a loan or advance''and all that follows through the end of the subsection and inserting the following: ''(1) the rate of interest on any loan or advance of credit insured under this title shall be fixed for the life of the loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act at the time such loan or advance of credit is made, and (2) no interest shall be charged on interest which is deferred on a loan or advance of credit made under this title. In establishing rates, terms and conditions for loans or advances of credit made under this title, the Secretary shall take into account a homeowner's ability to repay such loan or advance of credit.''; and

(C) in subsection (e), by inserting after the period at the end of the first sentence the following: ''Any eligible homeowner who receives a grant or an advance of credit under this title may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable.'';

(3) in section 105 (12 U.S.C. 2704)—

(A) by striking subsection (b);

(B) in subsection (e)—

(i) by inserting ''and emergency mortgage relief payments made under section 106'' after ''insured under this section''; and

(ii) by striking ''$1,500,000,000 at any one time'' and inserting ''$3,000,000,000'';

(C) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(D) by adding at the end the following new subsection:

''(e) The Secretary shall establish underwriting guidelines or procedures to allocate amounts made available for loans and advances insured under this section and for emergency relief payments made under section 106 based on the likelihood that a mortgagor will be able to resume mortgage payments, pursuant to the requirement under section 103(5).'';

(4) in section 107—

(A) by striking ''(a)''; and

(B) by striking subsection (b);

(5) in section 108 (12 U.S.C. 2707), by adding at the end the following new subsection:

''(d) COVERAGE OF EXISTING PROGRAMS.—The Secretary shall allow funds to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners. After such determination is made such State shall not be required to modify such program to comply with the provisions of this title.'';

(6) in section 109 (12 U.S.C. 2708)—

(A) in the section heading, by striking ''AUTHORIZATION AND'';

(B) by striking subsection (a);

(C) by striking ''(b)''; and

(D) by striking ''1977'' and inserting ''2011'';

(7) by striking sections 110, 111, and 113 (12 U.S.C. 2709, 2710, 2712); and

(8) by redesignating section 112 (12 U.S.C. 2711) as section 110.

SEC. 1079. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD STABILIZATION PROGRAM.

Using the authority made available under sections 101(a) and 115(a) of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury shall transfer to the Secretary of Housing and Urban Development $1,000,000,000, and the Secretary of Housing and Urban Development shall use such amounts for assistance to States and units of general local government for the redevelopment of abandoned and foreclosed homes, in accordance with the same provisions applicable under the second undesignated paragraph under the heading ''Community Planning and Development—Community Development Fund'' in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 217) to amounts made available under such second undesignated paragraph, except as follows:

(1) Notwithstanding the matter of such second undesignated paragraph that precedes the first proviso, amounts made available by this section shall remain available until expended.

(2) The 3rd, 4th, 5th, 6th, 7th, and 15th provisos of such second undesignated paragraph shall not apply to amounts made available by this section.

(3) Amounts made available by this section shall be allocated based on a funding formula for such amounts established by the Secretary in accordance with section 2301(b) of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301 note), except that—

(A) notwithstanding paragraph (2) of such section 2301(b), the formula shall be established not later than 30 days after the date of the enactment of this Act;

(B) the Secretary may not establish any minimum grant amount or size for grants to States;

(C) the Secretary may establish a minimum grant amount for direct allocations to units of general local government located within a State, which shall not exceed $1,000,000; and

(D) each State and local government receiving grant amounts shall establish procedures to create preferences for the development of affordable rental housing for properties assisted with amounts made available by this section.

(4) Paragraph (1) of section 2301(c) of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(5) Section 2302 of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(6) The fourth proviso from the end of such second undesignated paragraph shall be applied to amounts made available by this section by substituting ''2013'' for ''2012''.

(7) Notwithstanding section 2301(a) of the Housing and Economic Recovery Act of 2008, the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and other territory or possession of the United States for purposes of this section and title III of division B of such Act, as applied to amounts made available by this section.

(8)(A) None of the amounts made available by this section shall be distributed to—

(i) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(ii) any organization which employs applicable individuals.

(B) In this paragraph, the term ''applicable individual'' means an individual who—

(i) is—

(I) employed by the organization in a permanent or temporary capacity;

(II) contracted or retained by the organization; or

(III) acting on behalf of, or with the express or apparent authority of, the organization; and

(ii) has been convicted for a violation under Federal law relating to an election for Federal office.

SA 3892. Mr. BINGAMAN (for himself, Ms. MURKOWSKI, Mr. REID, Mr. BROWNBACK, Ms. CANTWELL, Mr. CORNYN, Mr. WYDEN, and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big 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 565, between lines 2 and 3, insert the following:

(e) JUST AND REASONABLE RATES.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

''(vi) Notwithstanding the exclusive jurisdiction of the Commission with respect to accounts, agreements, and transactions involving swaps or contracts of sale of a commodity for future delivery under this Act, no provision of this Act shall be construed—

''(I) to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.); or

''(II) to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission to ensure just and reasonable rates and protect the public interest under the Acts described in subclause (I).''.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

''(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into pursuant to—

''(A) a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission; or

''(B) a tariff or rate schedule establishing rates or charges for the sale of electric energy approved or permitted to take effect by the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality.''.

SA 3893. Mr. CORNYN 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 1304, line 11, strike ''person—'' and insert ''covered person—''.

On page 1305, line 2, strike ''practice,'' and insert ''practice that violates this title or applicable rules or orders issued by the Bureau,''.

On page 1310, between lines 16 and 17, insert the following:

(3) FEE STRUCTURE.—

(A) IN GENERAL.—Neither an attorney general of a State nor a State regulator may enter into a contingency fee agreement for legal services relating to a civil action or other proceeding under this section.

(B) DEFINITION.—For purposes of this paragraph, the term ''contingency fee agreement'' means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

SA 3894. Mr. CORNYN 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 976, strike line 7 and all that follows through page 977, line 17.

On page 1290, strike line 5 and all that follows through page 1291, line 9.

On page 1371, strike line 15 and all that follows through page 1372, line 2.

SA 3895. Mr. CORNYN submitted an amendment intended to be proposed to him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title IX, add the following:

SEC. 919C. SECURITIES LITIGATION ATTORNEY ACCOUNTABILITY AND TRANSPARENCY.

(a) DISCLOSURES OF PAYMENTS, FEE ARRANGEMENTS, CONTRIBUTIONS, AND OTHER POTENTIAL CONFLICTS OF INTEREST BETWEEN PLAINTIFF AND ATTORNEYS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 21D(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(a)) is amended by adding at the end the following new paragraphs:

''(10) DISCLOSURES REGARDING PAYMENTS.—

''(A) SWORN CERTIFICATIONS REQUIRED.—In any private action arising under this title, each plaintiff and any attorney for such

plaintiff shall provide sworn certifications, which shall be personally signed by such plaintiff and such attorney, respectively, and filed with the complaint, that identify any direct or indirect payment, or promise of any payment, by such attorney, or any person affiliated with such attorney, to such plaintiff, or any person affiliated with such plaintiff, beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4). Upon disclosure of any such payment or promise of payment, the court shall disqualify the attorney from representing the plaintiff.

''(B) DEFINITION.—For purposes of this paragraph, the term 'payment' shall include the transfer of money and any other thing of value, including the provision of services, other than representation of the plaintiff in the private action arising under this title.

''(11) DISCLOSURES REGARDING LEGAL REPRESENTATIONS.—In any private action arising under this title, each plaintiff and any attorney for such plaintiff shall provide sworn certifications, which shall be personally signed by such plaintiff and such attorney, respectively, and filed with the complaint, that identifies the nature and terms of any legal representation provided by such attorney, or any person affiliated with such attorney, to such plaintiff, or any person affiliated with such plaintiff other than the representation of the plaintiff in the private action arising under this title. The court may allow such certifications to be made under seal. The court shall make a determination whether the nature or terms of the fee arrangement for any other matter influenced the selection and retention of counsel in any private action arising under this title and, if the court so finds, shall disqualify the attorney from representing the plaintiff in any such action.

''(12) DISCLOSURES REGARDING CONTRIBUTIONS.—In any private action arising under this title, each plaintiff and any attorney for such plaintiff shall provide sworn certifications, which shall be personally signed by such plaintiff and such attorney, respectively, and filed with the complaint, that identifies any contribution made within five years prior to the filing of the complaint by such attorney, any person affiliated with such attorney, or any political action committee controlled by such attorney, to any elected official with authority to retain counsel for such plaintiff or to select or appoint, influence the selection or appointment of, or oversee any individual or group of individuals with that authority.

''(13) DISCLOSURE REGARDING OTHER CONFLICTS OF INTEREST.—In any private action arising under this title, each plaintiff and any attorney for such plaintiff shall provide sworn certifications, which shall be personally signed by such plaintiff and such attorney, respectively, and filed with the complaint, that identifies any other conflict of interest (other than one specified in paragraphs (10) through (12)) between such attorney and such plaintiff. The court shall make a determination of whether such conflict is sufficient to disqualify the attorney from representing the plaintiff.''.

(2) SECURITIES ACT OF 1933.—Section 27(a) of the Securities Act of 1933 (15 U.S.C. 77z-1(a)) is amended by adding at the end the following new paragraph:

''(9) DISCLOSURES REGARDING PAYMENTS.—

''(A) SWORN CERTIFICATIONS REQUIRED.—In any private action arising under this title, each plaintiff and any attorney for such plaintiff shall provide sworn certifications, which shall be personally signed by such plaintiff and such attorney, respectively, and filed with the complaint, that identify any direct or indirect payment, or promise of any payment, by such attorney, or any person affiliated with such attorney, to such plaintiff, or any person affiliated with such plaintiff, beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4). Upon disclosure of any such payment or promise of payment, the court shall disqualify the attorney from representing the plaintiff.

''(B) DEFINITION.—For purposes of this paragraph, the term 'payment' shall include the transfer of money and any other thing of value, including the provision of services, other than representation of the plaintiff in the private action arising under this title.

''(10) DISCLOSURES REGARDING LEGAL REPRESENTATIONS.—In any private action arising under this title, each plaintiff and any attorney for such plaintiff shall provide sworn certifications, which shall be personally signed by such plaintiff and such attorney, respectively, and filed with the complaint, that identifies the nature and terms of any legal representation provided by such attorney, or any person affiliated with such attorney, to such plaintiff, or any person affiliated with such plaintiff other than the representation of the plaintiff in the private action arising under this title. The court may allow such certifications to be made under seal. The court shall make a determination whether the nature or terms of the fee arrangement for any other matter influenced the selection and retention of counsel in any private action arising under this title and, if the court so finds, shall disqualify the attorney from representing the plaintiff in any such action.

''(11) DISCLOSURES REGARDING CONTRIBUTIONS.—In any private action arising under this title, each plaintiff and any attorney for such plaintiff shall provide sworn certifications, which shall be personally signed by such plaintiff and such attorney, respectively, and filed with the complaint, that identifies any contribution made within five years prior to the filing of the complaint by such attorney, any person affiliated with such attorney, or any political action committee controlled by such attorney, to any elected official with authority to retain counsel for such plaintiff or to select or appoint, influence the selection or appointment of, or oversee any individual or group of individuals with that authority.

''(12) DISCLOSURE REGARDING OTHER CONFLICTS OF INTEREST.—In any private action arising under this title, each plaintiff and any attorney for such plaintiff shall provide sworn certifications, which shall be personally signed by such plaintiff and such attorney, respectively, and filed with the complaint, that identifies any other conflict of interest (other than one specified in paragraphs (9) through (11)) between such attorney and such plaintiff. The court shall make a determination of whether such conflict is sufficient to disqualify the attorney from representing the plaintiff.''.

(b) SELECTION OF LEAD COUNSEL.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 21D(a)(3)(B)(v) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(a)(3)(B)(v)) is amended by adding at the end the following: ''In exercising the discretion of the court over the approval of lead counsel, the court may employ a competitive bidding process as one of the criteria in the selection and retention of counsel for the most adequate plaintiff.''.

(2) SECURITIES ACT OF 1933.—Section 27(a)(3)(B)(v) of the Securities Act of 1933 (15 U.S.C. 77z-1(a)(3)(B)(v)) is amended by adding at the end the following: ''In exercising the discretion of the court over the approval of lead counsel, the court may employ a competitive bidding process as one of the criteria in the selection and retention of counsel for the most adequate plaintiff.''.

(c) STUDY OF AVERAGE HOURLY FEES IN SECURITIES CLASS ACTIONS.—

(1) STUDY AND REVIEW REQUIRED.—The Comptroller General of the United States shall conduct a study and review of fee awards to lead counsel in securities class actions over the 5-year period preceding the date of enactment of this Act to determine the effective average hourly rate for lead counsel in such actions.

(2) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section. The Comptroller General shall submit an updated study every 3 years thereafter.

(3) DEFINITION.—For purposes of this subsection, the term ''securities class action'' means a private class action arising under the Securities Act of 1933 (15 U.S.C. 77 et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

(d) AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following:

''(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

''(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person, if the Commission finds, on the record, after notice and opportunity for hearing, that—

''(A) the person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

''(B) the imposition of the penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, the maximum amount of penalty for each act or omission shall be $75,000 for a natural person or $375,000 for any other person.

''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be $150,000 for a natural person or $725,000 for any other person, if—

''(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

''(ii) the act or omission directly or indirectly resulted in—

''(I) substantial losses or created a significant risk of substantial losses to other persons; or

''(II) substantial pecuniary gain to the person who committed the act or omission.

''(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such

penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.''.

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(A) by striking the undesignated matter immediately following paragraph (4);

(B) in the matter preceding paragraph (1), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(C) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the subparagraph margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(E) by adding at the end the following:

''(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

''(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(3) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(A) by striking the matter immediately following subparagraph (C);

(B) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest, and'';

(C) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the clause margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(E) by adding at the end the following:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(4) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(A) by striking the undesignated matter immediately following subparagraph (D);

(B) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(C) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the clause margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(E) by adding at the end the following:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

SA 3896. Mr. GREGG (for himself, Mr. BROWN of Massachusetts, and Mr. KERRY) 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 320, between lines 11 and 12, insert the following:

(g) PARITY.—Section 10(a)(1)(A) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(A)) is amended to read as follows:

''(A) SAVINGS ASSOCIATION.—The term 'savings association'—

''(i) includes a savings bank or cooperative bank which is deemed by the Director to be a savings association under subsection (l); and

''(ii) does not include an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).''.

SA 3897. Mr. DORGAN 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 584, line 7, after the first period insert the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with

the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

On page 808, line 8, after the first period, insert the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(d) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

SA 3898. Mr. ENSIGN proposed an amendment to amendment SA 3733 proposed by Mr. BROWN of Ohio (for himself, Mr. KAUFMAN, Mr. CASEY, Mr. WHITEHOUSE, Mr. MERKLEY, Mr. HARKIN, Mr. SANDERS, and Mr. BURRIS) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 2 of the amendment, strike lines 11 through 15 and insert the following:

(1) FINANCIAL COMPANY.—The term ''financial company'' means—

(A) any nonbank financial company supervised by the Board;

(B) the Federal National Mortgage Association; and

(C) the Federal Home Loan Mortgage Corporation.

SA 3899. 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 1219, after line 25, insert the following:

''(e) OFFICE OF MILITARY LIAISON.—

''(1) IN GENERAL.—The Director shall establish an Office of Military Liaison, 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 Military Liaison, 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 Military Liaison.''.

SA 3900. 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) net 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 3901. Mr. CARDIN (for himself, Mr. ENZI, and Mr. BROWNBACK) 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. INCREASE IN DEPOSIT AND SHARE INSURANCE AMOUNTS.

(a) PERMANENT INCREASE IN DEPOSIT INSURANCE.—Section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) is amended by striking ''$100,000'' and inserting ''$250,000''.

(b) PERMANENT INCREASE IN SHARE INSURANCE.—Section 207(k)(5) of the Federal Credit Union Act (12 U.S.C. 1787(k)(5)) is amended by striking ''$100,000'' and inserting ''$250,000''.

(c) REPEAL.—Section 136 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5241) is repealed, effective on the date of enactment of this Act.

SA 3902. Mr. FRANKEN (for himself, Ms. SNOWE, Mrs. MURRAY, Mrs. SHAHEEN, Mr. SCHUMER, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. CASEY, and Mr. FEINGOLD) 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, add the following:

Subtitle I—Office of the Homeowner Advocate

SEC. 1091. OFFICE OF THE HOMEOWNER ADVOCATE.

(a) ESTABLISHMENT.—There is established in the Department of the Treasury an office to be known as the ''Office of the Homeowner Advocate'' (in this subtitle referred to as the ''Office'').

(b) DIRECTOR.—

(1) IN GENERAL.—The Director of the Office of the Homeowner Advocate (in this subtitle referred to as the ''Director'') shall report directly to the Assistant Secretary of the Treasury for Financial Stability, and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code.

(2) APPOINTMENT.—The Director shall be appointed by the Secretary, after consultation with the Secretary of the Department of Housing and Urban Development, and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

(3) QUALIFICATIONS.—An individual appointed under paragraph (2) shall have—

(A) experience as an advocate for homeowners; and

(B) experience dealing with mortgage servicers.

(4) RESTRICTION ON EMPLOYMENT.—An individual may be appointed as Director only if such individual was not an officer or employee of either a mortgage servicer or the Department of the Treasury during the 4-year period preceding the date of such appointment.

(5) HIRING AUTHORITY.—The Director shall have the authority to hire staff, obtain support by contract, and manage the budget of the Office of the Homeowner Advocate.

SEC. 1092. FUNCTIONS OF THE OFFICE.

(a) IN GENERAL.—It shall be the function of the Office of the Homeowner Advocate to—

(1) assist homeowners, housing counselors, and housing lawyers in resolving problems with the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary, authorized under the Emergency Economic Stabilization Act of 2008 (in this subtitle referred to as the ''Home Affordable Modification Program'')

(2) identify areas, both individual and systematic, in which homeowners, housing counselors, and housing lawyers have problems in dealings with the Home Affordable Modification Program;

(3) to the extent possible, propose changes in the administrative practices of the Home Affordable Modification Program, to mitigate problems identified under paragraph (2);

(4) identify potential legislative changes which may be appropriate to mitigate such problems; and

(5) implement other programs and initiatives that the Director deems important to assisting homeowners, housing counselors, and housing lawyers in resolving problems with the Home Affordable Modification Program, which may include—

(A) running a triage hotline for homeowners at risk of foreclosure;

(B) providing homeowners with access to housing counseling programs of the Department of Housing and Urban Development at no cost to the homeowner;

(C) developing Internet tools related to the Home Affordable Modification Program; and

(D) developing training and educational materials.

(b) AUTHORITY.—

(1) IN GENERAL.—Staff designated by the Director shall have the authority to implement servicer remedies, on a case-by-case basis, subject to the approval of the Assistant Secretary of the Treasury for Financial Stability.

(2) LIMITATIONS ON FORECLOSURES.—No homeowner may be taken to a foreclosure sale, until the earlier of the date on which the Office of the Homeowner Advocate case involving the homeowner is closed, or 60 days since the opening of the Office of the Homeowner Advocate case involving the homeowner have passed, except that nothing in this section may be construed to relieve any loan servicers from any otherwise applicable rules, directives, or similar guidance under the Home Affordable Modification Program relating to the continuation or completion of foreclosure proceedings.

(3) RESOLUTION OF HOMEOWNER CONCERNS.—The Office shall, to the extent possible, resolve all homeowner concerns not later than 30 days after the opening of a case with such homeowner.

(c) COMMENCEMENT OF OPERATIONS.—The Office shall commence its operations, as required by this subtitle, not later than 3 months after the date of enactment of this Act.

(d) SUNSET.—The Office shall cease operations as of the date on which the Home Affordable Modification Program ceases to operate.

SEC. 1093. RELATIONSHIP WITH EXISTING ENTITIES.

(a) TRANSFER.—The Office shall coordinate and centralize all complaint escalations relating to the Home Affordable Modification Program.

(b) HOTLINE.—The HOPE hotline (or any successor triage hotline) shall reroute all complaints relating to the Home Affordable Modification Program to the Office.

(c) COORDINATION.—The Office shall coordinate with the compliance office of the Office of Financial Stability of the Department of the Treasury and the Homeownership Preservation Office of the Department of the Treasury.

SEC. 1094. REPORTS TO CONGRESS.

(a) TESTIMONY.—The Director shall be available to testify before the Committee on

Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not less frequently than 4 times a year, or at any time at the request of the Chairs of either committee.

(b) REPORTS.—Once annually, the Director shall provide a detailed report to Congress on the Home Affordable Modification Program. Such report shall contain full and substantive analysis, in addition to statistical information, including, at a minimum—

(1) data and analysis of the types and volume of complaints received from homeowners, housing counselors, and housing lawyers, broken down by category of servicer, except that servicers may not be identified by name in the report;

(2) a summary of not fewer than 20 of the most serious problems encountered by Home Affordable Modification Program participants, including a description of the nature of such problems;

(3) to the extent known, identification of the 10 most litigated issues for Home Affordable Modification Program participants, including recommendations for mitigating such disputes;

(4) data and analysis on the resolutions of the complaints received from homeowners, housing counselors, and housing lawyers;

(5) identification of any programs or initiatives that the Office has taken to improve the Home Affordable Modification Program;

(6) recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by Home Affordable Modification Program participants; and

(7) such other information as the Director may deem advisable.

SEC. 1095. FUNDING.

Amounts made available for the costs of administration of the Home Affordable Modification Program that are not otherwise obligated shall be available to carry out the duties of the Office. Funding shall be maintained at levels adequate to reasonably carry out the functions of the Office.

SA 3903. Mr. CHAMBLISS 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 1051, line 2, after the comma insert the following: ''or, with respect to any such transaction, an institution that sells or transfers assets, either directly or indirectly, including through an affiliate, to the Federal Agricultural Mortgage Corporation for the purpose of securitization,''.

SA 3904. Mr. CHAMBLISS 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 487, line 15, after the comma insert ''the Federal Home Loan Bank System, the Federal Farm Credit Banks Funding Corporation, the Federal Agricultural Mortgage Corporation,''.

SA 3905. Mr. CHAMBLISS 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:

Beginning on page 648, strike line 11 and all that follows through page 649, line 2, and insert the following:

stitutions shall contain a capital requirement that is greater than zero.

SA 3906. Mr. CHAMBLISS 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 855, strike lines 8 through 20 and insert the following:

tain a capital requirement that is greater than zero.

SA 3907. Mr. CHAMBLISS 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 577, strike lines 5 through 24.

SA 3908. Mr. CHAMBLISS 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:

Beginning on page 793, strike line 5 and all that follows through page 794, line 3.

SA 3909. Mr. CHAMBLISS 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 612, line 24, strike ''burden'' and insert ''burden on clearing on the derivatives clearing organization''

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the State and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Thursday, May 20, 2010, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of this hearing is to receive testimony on S. 2921, to provide for the conservation, enhanced recreation opportunities, and development of renewable energy in the California Desert Conservation Area, to require the Secretary of the Interior to designate certain offices to serve as Renewable Energy Coordination Offices for coordination of Federal permits for renewable energy projects and transmission lines to integrate renewable energy development, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510–6150, or by email to testimony@energy.senate.gov.

For further information, please contact David Brooks at (202) 224–9863 or Allison Seyferth at (202) 224–4905.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on May 6, 2010, at 10 a.m., in room 253 of the Russell Senate Office Building.

Whereas nursing homes are intimate communities where acts of caring, kindness, and respect are the norm;

Whereas, when the positive bond that naturally develops between patients and their caregivers is established, patients experience not only better physical care and healing, but also enrichment of the mind, heart, and spirit and an affirmation of their value; and

Whereas National Nursing Home Week recognizes the people who provide care to the Nation's most vulnerable population: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week beginning May 9, 2010, as ''National Nursing Home Week'';

(2) recognizes that a majority of people in the United States, because of social needs, disability, trauma, or illness, will require long-term care services at some point in their lives;

(3) honors nursing home residents and the people who care for them each day, including family members, volunteers, and dedicated long-term care professionals, for their contributions to their communities and the United States; and

(4) encourages the people of the United States to observe National Nursing Home Week with appropriate ceremonies and activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3910. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3911. Mr. CASEY 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 3912. Mr. WHITEHOUSE (for Ms. CANTWELL) proposed an amendment to the bill H.R. 3619, to authorize appropriations for the Coast Guard for fiscal year 2010, and for other purposes.

SA 3913. Mr. WHITEHOUSE (for Mr. GREGG) proposed an amendment to the resolution S. Res. 480, condemning the continued detention of Burmese democracy leader Daw Aung San Suu Kyi and calling on the military regime in Burma to permit a credible and fair election process and the transition to civilian, democratic rule.

SA 3914. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3915. Mr. CHAMBLISS 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 3916. Mr. CHAMBLISS 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 3917. Mr. CHAMBLISS 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 3918. Ms. SNOWE (for herself and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3919. Mr. CONRAD (for himself, Mr. CRAPO, Mr. BARRASSO, Mr. KERRY, Mr. BROWN of Massachusetts, Ms. SNOWE, Ms. LANDRIEU, Mr. DORGAN, Mr. ROBERTS, Mr. ENZI, Mrs. MCCASKILL, Ms. COLLINS, Ms. CANTWELL, and 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 3920. Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. NELSON of Nebraska, Mr. JOHANNS, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3921. 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.

TEXT OF AMENDMENTS

SA 3910. Mr. PRYOR 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 1013, line 18, strike ''and'' and all that follows through line 20 and insert the following:

''(ii) a description of any internal review of rating procedures and methodologies conducted by the nationally recognized statistical rating organization; and

''(iii) an evaluation of how well the nationally recognized statistical rating organization adheres to the rating procedures and methodologies of the nationally recognized statistical rating organization;

''(iv) a narrative response agreeing or disagreeing with the results of the most recent annual examination of the nationally recognized statistical rating organization carried out by the Commission under subsection (p)(3); and

''(v) a certification that the report is accurate and complete.

On page 1016, line 18, strike ''and'' and all that follows through line 23 and insert the following:

''(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization; and

''(ix) whether the nationally recognized statistical rating organization fully complies with the public disclosure requirements under this section regarding rating procedures and methodologies.

SA 3911. Mr. CASEY 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 40, between lines 12 and 13, insert the following:

(5) DISCLOSURE OF REASONS FOR DETERMINATION.—

(A) STATEMENT.—Following an affirmative determination by the Council with respect to any nonbank financial company that is registered pursuant to the Investment Company Act of 1940, the primary financial regulatory agency may request the Council to provide a detailed statement of—

(i) reasons for the determination by the Council that material financial distress at that particular company would pose a threat to the financial stability of the United States; and

(ii) why prudential regulation by the primary financial regulatory agency would be inadequate to prevent such a threat.

(B) REQUESTS FOR RECONSIDERATION.—If the primary financial regulatory agency disagrees with the detailed statement of reasons provided under subparagraph (A), the agency may request the Council to reconsider its determination, or may propose its own prudential standards to address the concerns identified in the statement of reasons in lieu of prudential standards imposed by the Board of Governors, which prudential standards the Council shall accept, unless it determines, by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson, that such prudential standards would be inadequate to prevent such a threat.

On page 40, line 23, insert after ''company,'' the following: ''including all procedures under subsection (e)(5),''.

SA 3912. Mr. WHITEHOUSE (for Ms. CANTWELL) proposed an amendment to the bill H.R. 3619, to authorize appropriations for the Coast Guard for fiscal year 2010, and for other purposes; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Coast Guard Authorization Act for Fiscal Years 2010 and 2011''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for each of fiscal years 2010 and 2011 as follows:

(1) For the operation and maintenance of the Coast Guard, $6,556,188,000, of which $24,500,000 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(2) For the acquisition, construction, renovation, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, $1,383,980,000, of which $20,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990, to remain available until expended; such funds appropriated for personnel compensation and benefits and related costs of acquisition, construction, and improvements shall be available for procurement of services necessary to carry out the Integrated Deepwater Systems program.

(3) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $1,361,245,000.

(4) For environmental compliance and restoration functions under chapter 19 of title 14, United States Code, $13,198,000.

(5) For research, development, test, and evaluation programs related to maritime technology, $19,745,000.

(6) For operation and maintenance of the Coast Guard reserve program, $133,632,000.

SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

(a) ACTIVE DUTY STRENGTH.—The Coast Guard is authorized an end-of-year strength of active duty personnel of 49,954 as of September 30, 2010, and 52,452 as of September 30, 2011.

(b) MILITARY TRAINING STUDENT LOADS.—The Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,500 student years for fiscal year 2010, and 2,625 student years for fiscal year 2011.

(2) For flight training, 170 student years for fiscal year 2010 and 179 student years for fiscal year 2011.

(3) For professional training in military and civilian institutions, 350 student years for fiscal year 2010 and 368 student years for fiscal year 2011.

(4) For officer acquisition, 1,300 student years for fiscal year 2010 and 1,365 student years for fiscal year 2011.

TITLE II—ADMINISTRATION

SEC. 201. AUTHORITY TO DISTRIBUTE FUNDS THROUGH GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS TO MARITIME AUTHORITIES AND ORGANIZATIONS.

Section 149 of title 14, United States Code, is amended by adding at the end the following:

''(c) GRANTS TO INTERNATIONAL MARITIME ORGANIZATIONS.—The Commandant may, after consultation with the Secretary of State, make grants to, or enter into cooperative agreements, contracts, or other agreements with, international maritime organizations for the purpose of acquiring information or data about merchant vessel inspections, security, safety and environmental requirements, classification, and port state or flag state law enforcement or oversight.''.

SEC. 202. ASSISTANCE TO FOREIGN GOVERNMENTS AND MARITIME AUTHORITIES.

Section 149 of title 14, United States Code, as amended by section 201, is further amended by adding at the end the following:

''(d) AUTHORIZED ACTIVITIES.—

''(1) The Commandant may transfer or expend funds from any appropriation available to the Coast Guard for—

''(A) the activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

''(B) the activities of maritime authority liaison teams of foreign governments making reciprocal visits to Coast Guard units, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

''(C) seminars and conferences involving members of maritime authorities of foreign governments;

''(D) distribution of publications pertinent to engagement with maritime authorities of foreign governments; and

''(E) personnel expenses for Coast Guard civilian and military personnel to the extent that those expenses relate to participation in an activity described in subparagraph (C) or (D).

''(2) An activity may not be conducted under this subsection with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.''.

SEC. 203. COOPERATIVE AGREEMENTS FOR INDUSTRIAL ACTIVITIES.

Section 151 of title 14, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''All orders''; and

(2) by adding at the end the following:

''(b) ORDERS AND AGREEMENTS FOR INDUSTRIAL ACTIVITIES.—Under this section, the Coast Guard industrial activities may accept orders and enter into reimbursable agreements with establishments, agencies, and departments of the Department of Defense and the Department of Homeland Security.''.

SEC. 204. DEFINING COAST GUARD VESSELS AND AIRCRAFT.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by inserting after section 638 the following new section:

''§ 638a. Coast Guard vessels and aircraft defined

''For the purposes of sections 637 and 638 of this title, the term Coast Guard vessels and aircraft means—

''(1) any vessel or aircraft owned, leased, transferred to, or operated by the Coast Guard and under the command of a Coast Guard member; or

''(2) any other vessel or aircraft under the tactical control of the Coast Guard on which one or more members of the Coast Guard are assigned and conducting Coast Guard missions.''.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 17 of such title is amended by inserting after the item relating to section 638 the following:

''638a. Coast Guard vessels and aircraft defined.''.

TITLE III—ORGANIZATION

SEC. 301. VICE COMMANDANT; VICE ADMIRALS.

(a) VICE COMMANDANT.—

(1) Section 41 of title 14, United States Code, is amended by striking ''an admiral,'' and inserting ''admirals,''.

(2) The fourth sentence of section 47 of title 14, United States Code, is amended by striking ''vice admiral'' and inserting ''admiral''.

(b) VICE ADMIRALS.—Section 50 of such title is amended to read as follows:

''§ 50. Vice admirals

''(a)(1) The President may designate no more than 4 positions of importance and responsibility that shall be held by officers who—

''(A) while so serving, shall have the grade of vice admiral, with the pay and allowances of that grade; and

''(B) shall perform such duties as the Commandant may prescribe.

''(2) The President may appoint, by and with the advice and consent of the Senate, and reappoint, by and with the advice and consent of the Senate, to any such position an officer of the Coast Guard who is serving on active duty above the grade of captain. The Commandant shall make recommendations for such appointments.

''(b)(1) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that duty and, except as provided in paragraph (2) of this subsection or in section 51(d) of this title, shall terminate on the date the officer is detached from that duty.

''(2) An officer who is appointed to a position designated under subsection (a) shall continue to hold the grade of vice admiral—

''(A) while under orders transferring the officer to another position designated under subsection (a), beginning on the date the officer is detached from that duty and terminating on the date before the day the officer assumes the subsequent duty, but not for more than 60 days;

''(B) while hospitalized, beginning on the day of the hospitalization and ending on the day the officer is discharged from the hospital, but not for more than 180 days; and

''(C) while awaiting retirement, beginning on the date the officer is detached from duty and ending on the day before the officer's retirement, but not for more than 60 days.

''(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

''(2) An officer serving in a grade above rear admiral who holds the permanent grade of rear admiral (lower half) shall be considered for promotion to the permanent grade of rear admiral as if the officer was serving in the officer's permanent grade.

''(d) Whenever a vacancy occurs in a position designated under subsection (a), the Commandant shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.''.

(c) REPEAL.—Section 50a of such title is repealed.

(d) CONFORMING AMENDMENTS.—Section 51 of such title is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

''(a) An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.

''(b) An officer, other than the Commandant, who is retired while serving in the grade of admiral or vice admiral, or who, after serving at least 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.

''(c) An officer, other than the Commandant, who, after serving less than 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.''; and

(2) by striking ''Area Commander, or Chief of Staff'' in subsection (d)(2) and inserting ''or Vice Admiral''.

(e) CONTINUITY OF GRADE.—Section 52 of title 14, United States Code, is amended by inserting ''or admiral'' after ''vice admiral'' the first place it appears.

(f) CONTINUATION ON ACTIVE DUTY.—The second sentence of section 290(a) of title 14, United States Code, is amended to read as follows: ''Officers, other than the Commandant, serving for the time being or who have served in the grade of vice admiral or admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued at the grade of rear admiral.''.

(g) CLERICAL AMENDMENTS.—

(1) The section caption for section 47 of such title is amended to read as follows:

''§ 47. Vice commandant; appointment''.

(2) The section caption for section 52 of title 14, United States Code, is amended to read as follows:

''§ 52. Vice admirals and admiral, continuity of grade''.

(3) The table of contents for chapter 3 of such title is amended—

(A) by striking the item relating to section 47 and inserting the following:

''47. Vice Commandant; appointment.'';

(B) by striking the item relating to section 50a;

(C) by striking the item relating to section 50 and inserting the following:

''50. Vice admirals.''; and

(D) by striking the item relating to section 52 and inserting the following:

''52. Vice admirals and admiral, continuity of grade.''.

(h) TECHNICAL CORRECTION.—Section 47 of such title is further amended by striking ''subsection'' in the fifth sentence and inserting ''section''.

(i) TREATMENT OF INCUMBENTS; TRANSITION.—

(1) Notwithstanding any other provision of law, the officer who, on the date of enactment of this Act, is serving as Vice Commandant—

(A) shall continue to serve as Vice Commandant;

(B) shall have the grade of admiral with pay and allowances of that grade; and

(C) shall not be required to be reappointed by reason of the enactment of that Act.

(2) Notwithstanding any other provision of law, an officer who, on the date of enactment of this Act, is serving as Chief of Staff, Commander, Atlantic Area, or Commander, Pacific Area—

(A) shall continue to have the grade of vice admiral with pay and allowance of that grade until such time that the officer is relieved of his duties and appointed and confirmed to another position as a vice admiral or admiral; or

(B) for the purposes of transition, may continue at the grade of vice admiral with pay and allowance of that grade, for not more than 1 year after the date of enactment of this Act, to perform the duties of the officer's former position and any other such duties that the Commandant prescribes.

SEC. 302. NUMBER AND DISTRIBUTION OF COMMISSIONED OFFICERS ON THE ACTIVE DUTY PROMOTION LIST.

(a) IN GENERAL.—Section 42 of title 14, United States Code, is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

''(a) The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed 7,200. This total number may be temporarily increased up to 2 percent for no more than the 60 days that follow the commissioning of a Coast Guard Academy class.

''(b) The total number of commissioned officers authorized by this section shall be distributed in grade not to exceed the following percentages:

''(1) 0.375 percent for rear admiral.

''(2) 0.375 percent for rear admiral (lower half).

''(3) 6.0 percent for captain.

''(4) 15.0 percent for commander.

''(5) 22.0 percent for lieutenant commander.

The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary may, as the needs of the Coast Guard require, reduce any of the percentages set forth in paragraphs (1) through (5) and apply that total percentage reduction to any other lower grade or combination of lower grades.

''(c) The Secretary shall, at least once a year, compute the total number of commissioned officers authorized to serve in each grade by applying the grade distribution percentages of this section to the total number of commissioned officers listed on the current active duty promotion list. In making such calculations, any fraction shall be rounded to the nearest whole number. The number of commissioned officers on the active duty promotion list serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not be counted against the total number of commissioned officers authorized to serve in each grade.'';

(2) by striking subsection (e) and inserting the following:

''(e) The number of officers authorized to be serving on active duty in each grade of

the permanent commissioned teaching staff of the Coast Guard Academy and of the Reserve serving in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be prescribed by the Secretary.''; and

(3) by striking the caption of such section and inserting the following:

''§ 42. Number and distribution of commissioned officers on the active duty promotion list''.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of such title is amended by striking the item relating to section 42 and inserting the following:

''42. Number and distribution of commissioned officers on the active duty promotion list''.

TITLE IV—PERSONNEL

SEC. 401. LEAVE RETENTION AUTHORITY.

Section 701(f)(2) of title 10, United States Code, is amended by inserting ''or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288, 42 U.S.C. 5121 et seq.)'' after ''operation''.

SEC. 402. LEGAL ASSISTANCE FOR COAST GUARD RESERVISTS.

Section 1044(a)(4) of title 10, United States Code, is amended—

(1) by striking ''(as determined by the Secretary of Defense),'' and inserting ''(as determined by the Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast Guard when it is not operating as a service of the Navy),''; and

(2) by striking ''prescribed by the Secretary of Defense,'' and inserting ''prescribed by Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast Guard when it is not operating as a service of the Navy,''.

SEC. 403. REIMBURSEMENT FOR CERTAIN MEDICAL-RELATED TRAVEL EXPENSES.

Section 1074i(a) of title 10, United States Code, is amended—

(1) by striking ''IN GENERAL.—In'' and inserting ''IN GENERAL.—(1) In''; and

(2) by adding at the end the following:

''(2) In any case in which a covered beneficiary resides on an INCONUS island that lacks public access roads to the mainland and is referred by a primary care physician to a specialty care provider on the mainland who provides services less than 100 miles from the location in which the beneficiary resides, the Secretary shall reimburse the reasonable travel expenses of the covered beneficiary, and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age.''.

SEC. 404. RESERVE COMMISSIONED WARRANT OFFICER TO LIEUTENANT PROGRAM.

Section 214(a) of title 14, United States Code, is amended to read as follows:

''(a) The President may appoint temporary commissioned officers—

''(1) in the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine; and

''(2) in the Coast Guard Reserve in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers of the Coast Guard Reserve.''.

SEC. 405. ENHANCED STATUS QUO OFFICER PROMOTION SYSTEM.

(a) Section 253(a) of title 14, United States Code, is amended—

(1) by inserting ''and'' after ''considered,''; and

(2) by striking ''consideration, and the number of officers the board may recommend for promotion'' and inserting ''consideration''.

(b) Section 258 of such title is amended—

(1) by inserting ''(a)'' before ''The Secretary''; and

(2) by adding at the end the following:

''(b) In addition to the information provided pursuant to subsection (a), the Secretary may furnish the selection board—

''(1) specific direction relating to the needs of the service for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and

''(2) such other guidance that the Secretary believes may be necessary to enable the board to properly perform its functions. Selections made based on the direction and guidance provided under this subsection shall not exceed the maximum percentage of officers who may be selected from below the announced promotion zone at any given selection board convened under section 251 of this title.''.

(c) Section 259(a) of such title is amended by striking ''board'' the second place it appears and inserting ''board, giving due consideration to the needs of the service for officers with particular skills so noted in the specific direction furnished pursuant to section 258 of this title,''.

(d) Section 260(b) of such title is amended by inserting ''to meet the needs of the service (as noted in the specific direction furnished the board under section 258 of this title)'' after ''qualified for promotion''.

SEC. 406. APPOINTMENT OF CIVILIAN COAST GUARD JUDGES.

Section 875 of the Homeland Security Act of 2002 (6 U.S.C. 455) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) APPOINTMENT OF JUDGES.—The Secretary may appoint civilian employees of the Department of Homeland Security as appellate military judges, available for assignment to the Coast Guard Court of Criminal Appeals as provided for in section 866(a) of title 10, United States Code.''.

SEC. 407. COAST GUARD PARTICIPATION IN THE ARMED FORCES RETIREMENT HOME SYSTEM.

(a) ELIGIBILITY UNDER THE ARMED FORCES RETIREMENT HOME ACT.—Section 1502 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 401) is amended—

(1) by striking ''does not include the Coast Guard when it is not operating as a service of the Navy.'' in paragraph (4) and inserting ''has the meaning given such term in section 101(4) of title 10.'';

(2) by striking ''and'' in paragraph (5)(C);

(3) by striking ''Affairs.'' in paragraph (5)(D) and inserting ''Affairs; and'';

(4) by adding at the end of paragraph (5) the following:

''(E) the Assistant Commandant of the Coast Guard for Human Resources.''; and

(5) by adding at the end of paragraph (6) the following:

''(E) The Master Chief Petty Officer of the Coast Guard.''.

(b) DEDUCTIONS.—

(1) Section 2772 of title 10, United States Code, is amended—

(A) by striking ''of the military department'' in subsection (a);

(B) by striking ''Armed Forces Retirement Home Board'' in subsection (b) and inserting ''Chief Operating Officer of the Armed Forces Retirement Home''; and

(C) by striking subsection (c).

(2) Section 1007(i) of title 37, United States Code, is amended—

(A) by striking ''Armed Forces Retirement Home Board,'' in paragraph (3) and inserting ''Chief Operating Officer of the Armed Forces Retirement Home,''; and

(B) by striking ''does not include the Coast Guard when it is not operating as a service of the Navy.'' in paragraph (4) and inserting ''has the meaning given such term in section 101(4) of title 10.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first pay period beginning on or after January 1, 2010.

SEC. 408. CREW WAGES ON PASSENGER VESSELS.

(a) FOREIGN AND INTERCOASTAL VOYAGES.—

(1) CAP ON PENALTY WAGES.—Section 10313(g) of title 46, United States Code, is amended—

(A) by striking ''When'' and inserting ''(1) Subject to paragraph (2), when''; and

(B) by adding at the end the following:

''(2) The total amount required to be paid under paragraph (1) with respect to all claims in a class action suit by seamen on a passenger vessel capable of carrying more than 500 passengers for wages under this section against a vessel master, owner, or operator or the employer of the seamen shall not exceed 10 times the unpaid wages that are the subject of the claims.

''(3) A class action suit for wages under this subsection must be commenced within 3 years after the later of—

''(A) the date of the end of the last voyage for which the wages are claimed; or

''(B) the receipt, by a seaman who is a claimant in the suit, of a payment of wages that are the subject of the suit that is made in the ordinary course of employment.''.

(2) DEPOSITS.—Section 10315 of such title is amended by adding at the end the following:

''(f) DEPOSITS IN SEAMAN ACCOUNT.—By written request signed by the seaman, a seaman employed on a passenger vessel capable of carrying more than 500 passengers may authorize the master, owner, or operator of the vessel, or the employer of the seaman, to make deposits of wages of the seaman into a checking, savings, investment, or retirement account, or other account to secure a payroll or debit card for the seaman if—

''(1) the wages designated by the seaman for such deposit are deposited in a United States or international financial institution designated by the seaman;

''(2) such deposits in the financial institution are fully guaranteed under commonly accepted international standards by the government of the country in which the financial institution is licensed;

''(3) a written wage statement or pay stub, including an accounting of any direct deposit, is delivered to the seaman no less often than monthly; and

''(4) while on board the vessel on which the seaman is employed, the seaman is able to arrange for withdrawal of all funds on deposit in the account in which the wages are deposited.''.

(b) COASTWISE VOYAGES.—

(1) CAP ON PENALTY WAGES.—Section 10504(c) of such title is amended—

(A) by striking ''When'' and inserting ''(1) Subject to subsection (d), and except as provided in paragraph (2), when''; and

(B) by adding at the end the following:

''(2) The total amount required to be paid under paragraph (1) with respect to all

claims in a class action suit by seamen on a passenger vessel capable of carrying more than 500 passengers for wages under this section against a vessel master, owner, or operator or the employer of the seamen shall not exceed 10 times the unpaid wages that are the subject of the claims.

''(3) A class action suit for wages under this subsection must be commenced within 3 years after the later of—

''(A) the date of the end of the last voyage for which the wages are claimed; or

''(B) the receipt, by a seaman who is a claimant in the suit, of a payment of wages that are the subject of the suit that is made in the ordinary course of employment.''.

(2) DEPOSITS.—Section 10504 of such title is amended by adding at the end the following:

''(f) DEPOSITS IN SEAMAN ACCOUNT.—By written request signed by the seaman, a seaman employed on a passenger vessel capable of carrying more than 500 passengers may authorize the master, owner, or operator of the vessel, or the employer of the seaman, to make deposits of wages of the seaman into a checking, savings, investment, or retirement account, or other account to secure a payroll or debit card for the seaman if—

''(1) the wages designated by the seaman for such deposit are deposited in a United States or international financial institution designated by the seaman;

''(2) such deposits in the financial institution are fully guaranteed under commonly accepted international standards by the government of the country in which the financial institution is licensed;

''(3) a written wage statement or pay stub, including an accounting of any direct deposit, is delivered to the seaman no less often than monthly; and

''(4) while on board the vessel on which the seaman is employed, the seaman is able to arrange for withdrawal of all funds on deposit in the account in which the wages are deposited.''.

SEC. 409. PROTECTION AND FAIR TREATMENT OF SEAFARERS.

(a) IN GENERAL.—Chapter 111 of title 46, United States Code, is amended by adding at the end the following new section:

''§ 11113. Protection and fair treatment of seafarers

''(a) PURPOSE.—The purpose of this section is to ensure the protection and fair treatment of seafarers.

''(b) FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury a special fund known as the 'Support of Seafarers Fund'.

''(2) USE OF AMOUNTS IN FUND.—The amounts covered into the Fund shall be available to the Secretary, without further appropriation and without fiscal year limitation, to—

''(A) pay necessary support, pursuant to subsection (c)(1)(A) of this section; and

''(B) reimburse a shipowner for necessary support, pursuant to subsection (c)(1)(B) of this section.

''(3) AMOUNTS CREDITED TO FUND.—Notwithstanding any other provision of law, the Fund may receive—

''(A) any moneys ordered to be paid to the Fund in the form of community service pursuant to section 3563(b) of title 18;

''(B) amounts reimbursed or recovered pursuant to subsection (d) of this section;

''(C) amounts appropriated to the Fund pursuant to subsection (g) of this section; and

''(D) appropriations available to the Secretary for transfer.

''(4) PREREQUISITE FOR COMMUNITY SERVICE CREDITS.—The Fund may receive credits pursuant to paragraph (3)(A) of this subsection only when the unobligated balance of the Fund is less than $5,000,000.

''(5) REPORT REQUIRED.—

''(A) Except as provided in subparagraph (B) of this paragraph, the Secretary shall not obligate any amount in the Fund in a given fiscal year unless the Secretary has submitted to Congress, concurrent with the President's budget submission for that fiscal year, a report that describes—

''(i) the amounts credited to the Fund, pursuant to paragraph (3) of this subsection, for the preceding fiscal year;

''(ii) a detailed description of the activities for which amounts were charged; and

''(iii) the projected level of expenditures from the Fund for the coming fiscal year, based on—

''(I) on-going activities; and

''(II) new cases, derived from historic data.

''(B) The limitation in subparagraph (A) of this paragraph shall not apply to obligations during the first fiscal year during which amounts are credited to the Fund.

''(6) FUND MANAGER.—The Secretary shall designate a Fund manager, who shall—

''(A) ensure the visibility and accountability of transactions utilizing the Fund;

''(B) prepare the report required by paragraph (5); and

''(C) monitor the unobligated balance of the Fund and provide notice to the Secretary and the Attorney General whenever the unobligated balance of the Fund is less than $5,000,000.

''(c) IN GENERAL.—

''(1) AUTHORITY.—The Secretary is authorized—

''(A) to pay, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, necessary support of—

''(i) any seafarer who enters, remains, or has been paroled into the United States and is involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard; and

''(ii) any seafarer whom the Secretary finds to have been abandoned in the United States; and

''(B) to reimburse, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, a shipowner, who has filed a bond or surety satisfactory pursuant to subparagraph (A) and provided necessary support of a seafarer who has been paroled into the United States to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard, for costs of necessary support, when the Secretary deems reimbursement necessary to avoid serious injustice.

''(2) LIMITATION.—Nothing in this section shall be construed—

''(A) to create a right, benefit, or entitlement to necessary support; or

''(B) to compel the Secretary to pay, or reimburse the cost of, necessary support.

''(d) REIMBURSEMENTS; RECOVERY.—

''(1) IN GENERAL.—Any shipowner shall reimburse the Fund an amount equal to the total amount paid from the Fund for necessary support of the seafarer, plus a surcharge of 25 percent of such total amount if—

''(A)(i) the shipowner, during the course of an investigation, reporting, documentation, or adjudication of any matter that the Coast Guard referred to a United States Attorney or the Attorney General, fails to provide necessary support of a seafarer who has been paroled into the United States to facilitate the investigation, reporting, documentation, or adjudication; and

''(ii) a criminal penalty is subsequently imposed against the shipowner; or

''(B) the shipowner, under any circumstance, abandons a seafarer in the United States, as decided by the Secretary.

''(2) ENFORCEMENT.—If a shipowner fails to reimburse the Fund as required under paragraph (1) of this subsection, the Secretary may—

''(A) proceed in rem against any vessel of the shipowner in the Federal district court for the district in which such vessel is found; and

''(B) withhold or revoke the clearance, required by section 60105 of this title, of any vessel of the shipowner wherever such vessel is found.

''(3) Whenever clearance is withheld or revoked pursuant to paragraph (2)(B) of this subsection, clearance may be granted if the shipowner reimburses the Fund the amount required under paragraph (1) of this subsection.

''(e) SURETY; ENFORCEMENT OF TREATIES, LAWS, AND REGULATIONS.—

''(1) BOND AND SURETY AUTHORITY.—The Secretary is authorized to require a bond or surety satisfactory as an alternative to withholding or revoking clearance required under section 60105 of this title if, in the opinion of the Secretary, such bond or surety satisfactory is necessary to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard if the surety corporation providing the bond is authorized by the Secretary of the Treasury under section 9305 of title 31 to provide surety bonds under section 9304 of that title.

''(2) APPLICATION.—The authority to require a bond or a surety satisfactory or to request the withholding or revocation of the clearance required under section 60105 of this title applies to any investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard.

''(f) DEFINITIONS.—In this section:

''(1) ABANDONS; ABANDONED.—The term 'abandons' or 'abandoned' means a shipowner's unilateral severance of ties with a seafarer or the shipowner's failure to provide necessary support of a seafarer.

''(2) BOND OR SURETY SATISFACTORY.—The term 'bond or surety satisfactory' means a negotiated instrument, the terms of which may, at the discretion of the Secretary, include provisions that require the shipowner to—

''(A) provide necessary support of a seafarer who has or may have information pertinent to an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;

''(B) facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;

''(C) stipulate to certain incontrovertible facts, including, but not limited to, the ownership or operation of the vessel, or the authenticity of documents and things from the vessel;

''(D) facilitate service of correspondence and legal papers;

''(E) enter an appearance in United States district court;

''(F) comply with directions regarding payment of funds;

''(G) name an agent in the United States for service of process;

''(H) make stipulations as to the authenticity of certain documents in United States district court;

''(I) provide assurances that no discriminatory or retaliatory measures will be taken against a seafarer involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;

''(J) provide financial security in the form of cash, bond, or other means acceptable to the Secretary; and

''(K) provide for any other appropriate measures as the Secretary considers necessary to ensure the Government is not prejudiced by granting the clearance required by section 60105 of title 46.

''(3) FUND.—The term 'Fund' means the Support of Seafarers Fund, established pursuant to this section.

''(4) NECESSARY SUPPORT.—The term 'necessary support' means normal wages, lodging, subsistence, clothing, medical care (including hospitalization), repatriation, and any other expense the Secretary deems appropriate.

''(5) SEAFARER.—The term 'seafarer' means an alien crewman who is employed or engaged in any capacity on board a vessel subject to the jurisdiction of the United States.

''(6) SHIPOWNER.—The term 'shipowner' means the individual or entity that owns, has an ownership interest in, or operates a vessel subject to the jurisdiction of the United States.

''(7) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—The term 'vessel subject to the jurisdiction of the United States' has the same meaning it has in section 70502(c) of this title, except that it excludes a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when that vessel is engaged in commerce.

''(g) REGULATIONS.—The Secretary may prescribe regulations to implement this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund $1,500,000 for each of fiscal years 2010, 2011, and 2012.''.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 111 of title 46, United States Code, is amended by adding at the end the following new item:

''11113. Protection and fair treatment of seafarers''.

TITLE V—ACQUISITION REFORM

SEC. 501. CHIEF ACQUISITION OFFICER.

(a) IN GENERAL.—Chapter 3 of title 14, United States Code, is amended by adding at the end the following:

''§ 55. Chief Acquisition Officer

''(a) IN GENERAL.—There shall be in the Coast Guard a Chief Acquisition Officer selected by the Commandant who shall be a Rear Admiral or civilian from the Senior Executive Service (career reserved). The Chief Acquisition Officer shall serve at the Assistant Commandant level and have acquisition management as that individual's primary duty.

''(b) QUALIFICATIONS.—The Chief Acquisition Officer shall be an acquisition professional with a Level III certification and must have at least 10 years experience in an acquisition position, of which at least 4 years were spent as—

''(1) the program executive officer;

''(2) the program manager of a Level 1 or Level 2 acquisition project or program;

''(3) the deputy program manager of a Level 1 or Level 2 acquisition; or

''(4) a combination of such positions.

''(c) FUNCTIONS OF THE CHIEF ACQUISITION OFFICER.—The functions of the Chief Acquisition Officer include—

''(1) monitoring the performance of programs and projects on the basis of applicable performance measurements and advising the Commandant, through the chain of command, regarding the appropriate business strategy to achieve the missions of the Coast Guard;

''(2) maximizing the use of full and open competition at the prime contract and subcontract levels in the acquisition of property, capabilities, and services by the Coast Guard by establishing policies, procedures, and practices that ensure that the Coast Guard receives a sufficient number of competitive proposals from responsible sources to fulfill the Government's requirements, including performance and delivery schedules, at the lowest cost or best value considering the nature of the property or service procured;

''(3) making acquisition decisions in concurrence with the technical authority, or technical authorities, as appropriate, of the Coast Guard, as designated by the Commandant, consistent with all other applicable laws and decisions establishing procedures within the Coast Guard;

''(4) ensuring the use of detailed performance specifications in instances in which performance based contracting is used;

''(5) managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;

''(6) developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate acquisition workforce;

''(7) assessing the requirements established for Coast Guard personnel regarding knowledge and skill in acquisition resources and management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

''(8) developing strategies and specific plans for hiring, training, and professional development; and

''(9) reporting to the Commandant, through the chain of command, on the progress made in improving acquisition management capability.''.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of title 14, United States Code, is amended by adding at the end the following:

''55. Chief Acquisition Officer''.

(c) SELECTION DEADLINE.—As soon as practicable after the date of enactment of this Act, but no later than October 1, 2011, the Commandant of the Coast Guard shall select a Chief Acquisition Officer under section 55 of title 14, United States Code.

SEC. 502. ACQUISITIONS.

(a) IN GENERAL.—Part I of title 14, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 15. ACQUISITIONS

''SUBCHAPTER 1—GENERAL PROVISIONS

''Sec.
''561. Acquisition directorate
''562. Senior acquisition leadership team
''563. Improvements in Coast Guard acquisition management
''564. Recognition of Coast Guard personnel for excellence in acquisition
''565. Prohibition on use of lead systems integrators
''566. Required contract terms
''567. Department of Defense consultation
''568. Undefinitized contractual actions

''SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

''Sec.
''571. Identification of major system acquisitions
''572. Acquisition
''573. Preliminary development and demonstration
''574. Acquisition, production, deployment, and support
''575. Acquisition program baseline breach

''SUBCHAPTER 3—DEFINITIONS

''Sec.
''581. Definitions

''SUBCHAPTER 1—GENERAL PROVISIONS

''§ 561. Acquisition directorate

''(a) ESTABLISHMENT.—The Commandant of the Coast Guard shall establish an acquisition directorate to provide guidance and oversight for the implementation and management of all Coast Guard acquisition processes, programs, and projects.

''(b) MISSION.—The mission of the acquisition directorate is—

''(1) to acquire and deliver assets and systems that increase operational readiness, enhance mission performance, and create a safe working environment; and

''(2) to assist in the development of a workforce that is trained and qualified to further the Coast Guard's missions and deliver the best value products and services to the Nation.

''§ 562. Senior acquisition leadership team

''(a) ESTABLISHMENT.—The Commandant shall establish a senior acquisition leadership team within the Coast Guard comprised of—

''(1) the Vice Commandant;

''(2) the Deputy and Assistant Commandants;

''(3) appropriate senior staff members of each Coast Guard directorate;

''(4) appropriate senior staff members for each assigned field activity or command; and

''(5) any other Coast Guard officer or employee designated by the Commandant.

''(b) FUNCTION.—The senior acquisition leadership team shall—

''(1) meet at the call of the Commandant at such places and such times as the Commandant may require;

''(2) provide advice and information on operational and performance requirements of the Coast Guard;

''(3) identify gaps and vulnerabilities in the operational readiness of the Coast Guard;

''(4) make recommendations to the Commandant and the Chief Acquisition Officer to remedy the identified gaps and vulnerabilities in the operational readiness of the Coast Guard; and

''(5) contribute to the development of a professional, experienced acquisition workforce by providing acquisition-experience tours of duty and educational development for officers and employees of the Coast Guard.

''§ 563. Improvements in Coast Guard acquisition management

''(a) PROJECT AND PROGRAM MANAGERS.—

''(1) PROJECT OR PROGRAM MANAGER DEFINED.—In this section, the term 'project or program manager' means an individual designated—

''(A) to develop, produce, and deploy a new asset to meet identified operational requirements; and

''(B) to manage cost, schedule, and performance of the acquisition or project or program.

''(2) LEVEL 1 PROJECTS.— An individual may not be assigned as the project or program manager for a Level 1 acquisition unless the individual holds a Level III acquisition certification as a program manager.

''(3) LEVEL 2 PROJECTS.—An individual may not be assigned as the project or program

manager for a Level 2 acquisition unless the individual holds a Level II acquisition certification as a program manager.

''(b) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM AND PROJECT MANAGERS.—Not later than one year after the date of enactment of the Coast Guard Authorization Act for Fiscal years 2010 and 2011, the Commandant shall issue guidance to address the qualifications, resources, responsibilities, tenure, and accountability of program and project managers for the management of acquisition programs and projects. The guidance shall address, at a minimum—

''(1) the qualifications required for project or program managers, including the number of years of acquisition experience and the professional training levels to be required of those appointed to project or program management positions; and

''(2) authorities available to project or program managers, including, to the extent appropriate, the authority to object to the addition of new program requirements that would be inconsistent with the parameters established for an acquisition program.

''(c) ACQUISITION WORKFORCE.—

''(1) IN GENERAL.—The Commandant shall designate a sufficient number of positions to be in the Coast Guard's acquisition workforce to perform acquisition-related functions at Coast Guard headquarters and field activities.

''(2) REQUIRED POSITIONS.—The Commandant shall ensure that members of the acquisition workforce have expertise, education, and training in at least 1 of the following acquisition career fields:

''(A) Acquisition logistics.

''(B) Auditing.

''(C) Business, cost estimating, and financial management.

''(D) Contracting.

''(E) Facilities engineering.

''(F) Industrial or contract property management.

''(G) Information technology.

''(H) Manufacturing, production, and quality assurance.

''(I) Program management.

''(J) Purchasing.

''(K) Science and technology.

''(L) Systems planning, research, development, and engineering.

''(M) Test and evaluation.

''(3) ACQUISITION WORKFORCE EXPEDITED HIRING AUTHORITY.—

''(A) IN GENERAL.—For purposes of sections 3304, 5333, and 5753 of title 5, the Commandant may—

''(i) designate any category of acquisition positions within the Coast Guard as shortage category positions; and

''(ii) use the authorities in such sections to recruit and appoint highly qualified person directly to positions so designated.

''(B) LIMITATION.—The Commandant may not appoint a person to a position of employment under this paragraph after September 30, 2012.

''(d) MANAGEMENT INFORMATION SYSTEM.—

''(1) IN GENERAL.—The Commandant shall establish a management information system capability to improve acquisition workforce management and reporting.

''(2) INFORMATION MAINTAINED.—Information maintained with such capability shall include the following standardized information on individuals assigned to positions in the workforce:

''(A) Qualifications, assignment history, and tenure of those individuals assigned to positions in the acquisition workforce or holding acquisition-related certifications.

''(B) Promotion rates for officers and members of the Coast Guard in the acquisition workforce.

''(e) CAREER PATHS.—To establish acquisition management as a core competency of the Coast Guard, the Commandant shall—

''(1) ensure that career paths for officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and

''(2) publish information on such career paths.

''§ 564. Recognition of Coast Guard personnel for excellence in acquisition

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall commence implementation of a program to recognize excellent performance by individuals and teams comprised of officers, members, and employees of the Coast Guard that contributed to the long-term success of a Coast Guard acquisition project or program.

''(b) ELEMENTS.—The program shall include—

''(1) specific award categories, criteria, and eligibility and manners of recognition;

''(2) procedures for the nomination by personnel of the Coast Guard of individuals and teams comprised of officers, members, and employees of the Coast Guard for recognition under the program; and

''(3) procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise and are appointed in such manner as the Commandant shall establish for the purposes of this program.

''(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Commandant, subject to the availability of appropriations, may award to any civilian employee recognized pursuant to the program a cash bonus to the extent that the performance of such individual so recognized warrants the award of such bonus.

''§ 565. Prohibition on use of lead systems integrators

''(a) IN GENERAL.—

''(1) USE OF LEAD SYSTEMS INTEGRATOR.—Except as provided in subsection (b), the Commandant may not use a private sector entity as a lead systems integrator for an acquisition contract awarded or delivery order or task order issued after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

''(2) FULL AND OPEN COMPETITION.—The Commandant and any lead systems integrator engaged by the Coast Guard, pursuant to the exceptions described in subsection (b), shall use full and open competition for any acquisition contract awarded after the date of enactment of that Act, unless otherwise excepted in accordance with the Competition in Contracting Act of 1984 (41 U.S.C. 251 note), the amendments made by that Act, and the Federal Acquisition Regulations.

''(3) NO EFFECT ON SMALL BUSINESS ACT.—Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided by and under the Small Business Act (15 U.S.C. 631 et seq.).

''(b) EXCEPTIONS.—

''(1) NATIONAL DISTRESS AND RESPONSE SYSTEM MODERNIZATION PROGRAM; NATIONAL SECURITY CUTTERS 2 AND 3.—Notwithstanding subsection (a), the Commandant may use a private sector entity as a lead systems integrator for the Coast Guard to complete the National Distress and Response System Modernization Program, the C4ISR projects directly related to the Integrated Deepwater Program, and National Security Cutters 2 and 3 if the Secretary of Homeland Security certifies that—

''(A) the acquisition is in accordance with the Competition in Contracting Act of 1984 (41 U.S.C. 251 note), the amendments made by that Act, and the Federal Acquisition Regulations; and

''(B) the acquisition and the use of a private sector entity as a lead systems integrator for the acquisition is in the best interest of the Federal Government.

''(2) TERMINATION DATE FOR EXCEPTIONS.—Except for the modification of delivery or task orders pursuant to Parts 4 and 42 of the Federal Acquisition Regulations, the Commandant may not use a private sector entity as a lead systems integrator after the earlier of—

''(A) September 30, 2012; or

''(B) the date on which the Commandant certifies in writing to the appropriate congressional committees that the Coast Guard has available and can retain sufficient contracting personnel and expertise within the Coast Guard, through an arrangement with other Federal agencies, or through contracts or other arrangements with private sector entities, to perform the functions and responsibilities of the lead system integrator in an efficient and cost-effective manner.

''§ 566. Required contract terms

''(a) IN GENERAL.—The Commandant shall ensure that a contract awarded or a delivery order or task order issued for an acquisition of a capability or an asset with an expected service life of 10 years and with a total acquisition cost that is equal to or exceeds $10,000,000 awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011—

''(1) provides that all certifications for an end-state capability or asset under such contract, delivery order, or task order, respectively, will be conducted by the Commandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;

''(2) requires that the Commandant shall maintain the authority to establish, approve, and maintain technical requirements;

''(3) requires that any measurement of contractor and subcontractor performance be based on the status of all work performed, including the extent to which the work performed met all performance, cost, and schedule requirements;

''(4) specifies that, for the acquisition or upgrade of air, surface, or shore capabilities and assets for which compliance with TEMPEST certification is a requirement, the standard for determining such compliance will be the air, surface, or shore standard then used by the Department of the Navy for that type of capability or asset; and

''(5) for any contract awarded to acquire an Offshore Patrol Cutter, includes provisions specifying the service life, fatigue life, and days underway in general Atlantic and North Pacific Sea conditions, maximum range, and maximum speed the cutter will be built to achieve.

''(b) PROHIBITED CONTRACT PROVISIONS.—The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 does not include any provision allowing for equitable adjustment that is not consistent with the Federal Acquisition Regulations.

''(c) INTEGRATED PRODUCT TEAMS.—Integrated product teams, and all teams that oversee integrated product teams, shall be chaired by officers, members, or employees of the Coast Guard.

''(d) DEEPWATER TECHNICAL AUTHORITIES.—The Commandant shall maintain or designate the technical authorities to establish, approve, and maintain technical requirements. Any such designation shall be made in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 55 of this title.

''§ 567. Department of Defense consultation

''(a) IN GENERAL.—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

''(b) INTER-SERVICE TECHNICAL ASSISTANCE.—The Commandant shall seek to enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Command, with the oversight of Coast Guard major acquisition programs. The memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

''(1) the exchange of technical assistance and support that the Assistant Commandants for Acquisition, Human Resources, Engineering, and Information technology may identify;

''(2) the use, as appropriate, of Navy technical expertise; and

''(3) the exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Commands, to facilitate the development of organic capabilities in the Coast Guard.

''(c) TECHNICAL REQUIREMENT APPROVAL PROCEDURES.—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

''§ 568. Undefinitized contractual actions

''(a) IN GENERAL.—The Coast Guard may not enter into an undefinitized contractual action unless such action is directly approved by the Head of Contracting Activity of the Coast Guard.

''(b) REQUESTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—Any request to the Head of Contracting Activity for approval of an undefinitized contractual action shall include a description of the anticipated effect on requirements of the Coast Guard if a delay is incurred for the purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

''(c) REQUIREMENTS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—

''(1) DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.—A contracting officer of the Coast Guard may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specification, and price by the earlier of—

''(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

''(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

''(2) LIMITATION ON OBLIGATIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the contracting officer for an undefinitized contractual action may not obligate under such contractual action an amount that exceeds 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), if a contractor submits a qualifying proposal to definitize an undefinitized contractual action before an amount that exceeds 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that exceeds 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

''(3) WAIVER.—The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

''(A) a contingency operation (as that term is defined in section 101(a)(13) of title 10);

''(B) operations to prevent or respond to a transportation security incident (as defined in section 70101(6) of title 46);

''(C) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment; or

''(D) an operation in response to a natural disaster or major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

''(4) LIMITATION ON APPLICATION.—This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

''(d) INCLUSION OF NONURGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action by the Coast Guard for spare parts and support equipment that are needed on an urgent basis unless the Commandant approves such inclusion as being—

''(1) good business practice; and

''(2) in the best interests of the United States.

''(e) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the Commandant approves such modification as being—

''(1) good business practice; and

''(2) in the best interests of the United States.

''(f) ALLOWABLE PROFIT.—The Commandant shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

''(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

''(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

''(g) DEFINITIONS.—In this section:

''(1) UNDEFINITIZED CONTRACTUAL ACTION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'undefinitized contractual action' means a new procurement action entered into by the Coast Guard for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

''(B) EXCLUSION.—The term 'undefinitized contractual action' does not include contractual actions with respect to—

''(i) foreign military sales;

''(ii) purchases in an amount not in excess of the amount of the simplified acquisition threshold; or

''(iii) special access programs.

''(2) QUALIFYING PROPOSAL.—The term 'qualifying proposal' means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

''SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

''§ 571. Identification of major system acquisitions

''(a) IN GENERAL.—

''(1) SUPPORT MECHANISMS.—The Commandant shall develop and implement mechanisms to support the establishment of mature and stable operational requirements for acquisitions under this subchapter.

''(2) MISSION ANALYSIS; AFFORDABILITY ASSESSMENT.—The Commandant may not initiate a Level 1 or Level 2 acquisition project or program until the Commandant—

''(A) completes a mission analysis that—

''(i) identifies any gaps in capability; and

''(ii) develops a clear mission need; and

''(B) prepares a preliminary affordability assessment for the project or program.

''(b) ELEMENTS.—

''(1) REQUIREMENTS.—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of a mission-needs statement, concept-of-operations document, capability development plan, and resource proposal for the initial project or program funding, and shall ensure the project or program is included in the Coast Guard Capital Investment Plan.

''(2) ASSESSMENT OF TRADE-OFFS.—In conducting an affordability assessment under subsection (a)(2)(B), the Commandant shall develop and implement mechanisms to ensure that trade-offs among cost, schedule, and performance are considered in the establishment of preliminary operational requirements for development and production of new assets and capabilities for Level 1 and Level 2 acquisitions projects and programs.

''(c) HUMAN RESOURCE CAPITAL PLANNING.—The Commandant shall develop staffing predictions, define human capital performance initiatives, and identify preliminary training needs for any such project or program.

''(d) DHS ACQUISITION APPROVAL.—A Level 1 or Level 2 acquisition project or program may not be implemented unless it is approved by the Department of Homeland Security Acquisition Review Board or the Joint Review Board.

''§ 572. Acquisition

''(a) IN GENERAL.—The Commandant may not establish a Level 1 or Level 2 acquisition project or program approved under section 571(d) until the Commandant—

''(1) clearly defines the operational requirements for the project or program;

''(2) establishes the feasibility of alternatives;

''(3) develops an acquisition project or program baseline;

''(4) produces a life-cycle cost estimate; and

''(5) assesses the relative merits of alternatives to determine a preferred solution in accordance with the requirements of this section.

''(b) ANALYSIS OF ALTERNATIVES.—

''(1) IN GENERAL.—The Commandant shall conduct an analysis of alternatives for the asset or capability to be acquired in an analyze and select phase of the acquisition process.

''(2) REQUIREMENTS.—The analysis of alternatives shall be conducted by a federally funded research and development center, a qualified entity of the Department of Defense, or a similar independent third party entity that has appropriate acquisition expertise and has no substantial financial interest in any part of the acquisition project or program that is the subject of the analysis. At a minimum, the analysis of alternatives shall include—

''(A) an assessment of the technical maturity, and technical and other risks;

''(B) an examination of capability, interoperability, and other disadvantages;

''(C) an evaluation of whether different combinations or quantities of specific assets or capabilities could meet the Coast Guard's overall performance needs;

''(D) a discussion of key assumptions and variables, and sensitivity to change in such assumptions and variables;

''(E) when an alternative is an existing asset or prototype, an evaluation of relevant safety and performance records and costs;

''(F) a calculation of life-cycle costs including—

''(i) an examination of likely research and development costs and the levels of uncertainty associated with such estimated costs;

''(ii) an examination of likely production and deployment costs and levels of uncertainty associated with such estimated costs;

''(iii) an examination of likely operating and support costs and the levels of uncertainty associated with such estimated costs;

''(iv) if they are likely to be significant, an examination of likely disposal costs and the levels of uncertainty associated with such estimated costs; and

''(v) such additional measures as the Commandant or the Secretary of Homeland Security determines to be necessary for appropriate evaluation of the asset; and

''(G) the business case for each viable alternative.

''(c) TEST AND EVALUATION MASTER PLAN.—

''(1) IN GENERAL.—For any Level 1 or Level 2 acquisition project or program the Chief Acquisition Officer shall approve a test and evaluation master plan specific to the acquisition project or program for the capability, asset, or subsystems of the capability or asset and intended to minimize technical, cost, and schedule risk as early as practicable in the development of the project or program.

''(2) TEST AND EVALUATION STRATEGY.—The master plan shall—

''(A) set forth an integrated test and evaluation strategy that will verify that capability-level or asset-level and subsystem-level design and development, including performance and supportability, have been sufficiently proven before the capability, asset, or subsystem of the capability or asset is approved for production; and

''(B) require that adequate developmental tests and evaluations and operational tests and evaluations established under subparagraph (A) are performed to inform production decisions.

''(3) OTHER COMPONENTS OF THE MASTER PLAN.—At a minimum, the master plan shall identify—

''(A) the key performance parameters to be resolved through the integrated test and evaluation strategy;

''(B) critical operational issues to be assessed in addition to the key performance parameters;

''(C) specific development test and evaluation phases and the scope of each phase;

''(D) modeling and simulation activities to be performed, if any, and the scope of such activities;

''(E) early operational assessments to be performed, if any, and the scope of such assessments;

''(F) operational test and evaluation phases;

''(G) an estimate of the resources, including funds, that will be required for all test, evaluation, assessment, modeling, and simulation activities; and

''(H) the Government entity or independent entity that will perform the test, evaluation, assessment, modeling, and simulation activities.

''(4) UPDATE.—The Chief Acquisition Officer shall approve an updated master plan whenever there is a revision to project or program test and evaluation strategy, scope, or phasing.

''(5) LIMITATION.—The Coast Guard may not—

''(A) proceed beyond that phase of the acquisition process that entails approving the supporting acquisition of a capability or asset before the master plan is approved by the Chief Acquisition Officer; or

''(B) award any production contract for a capability, asset, or subsystem for which a master plan is required under this subsection before the master plan is approved by the Chief Acquisition Officer.

''(d) LIFE-CYCLE COST ESTIMATES.—

''(1) IN GENERAL.—The Commandant shall implement mechanisms to ensure the development and regular updating of life-cycle cost estimates for each Level 1 or Level 2 acquisition to ensure that these estimates are considered in decisions to develop or produce new or enhanced capabilities and assets.

''(2) TYPES OF ESTIMATES.—In addition to life-cycle cost estimates that may be developed by acquisition program offices, the Commandant shall require that an independent life-cycle cost estimate be developed for each Level 1 or Level 2 acquisition project or program.

''(3) REQUIRED UPDATES.—For each Level 1 or Level 2 acquisition project or program the Commandant shall require that life-cycle cost estimates shall be updated before each milestone decision is concluded and the project or program enters a new acquisition phase.

''(e) DHS ACQUISITION APPROVAL.—A project or program may not enter the obtain phase under section 573 unless the Department of Homeland Security Acquisition Review Board or the Joint Review Board (or other entity to which such responsibility is delegated by the Secretary of Homeland Security) has approved the analysis of alternatives for the project. The Joint Review Board may also approve the low rates initial production quantity for the project or program if such an initial production quantity is planned by the acquisition project or program and deemed appropriate by the Joint Review Board.

''§ 573. Preliminary development and demonstration

''(a) IN GENERAL.—The Commandant shall ensure that developmental test and evaluation, operational test and evaluation, life cycle cost estimates, and the development and demonstration requirements are met to confirm that the projects or programs meet the requirements described in the mission-needs statement and the operational-requirements document and the following development and demonstration objectives:

''(1) To demonstrate that the most promising design, manufacturing, and production solution is based upon a stable, producible, and cost-effective product design.

''(2) To ensure that the product capabilities meet contract specifications, acceptable operational performance requirements, and system security requirements.

''(3) To ensure that the product design is mature enough to commit to full production and deployment.

''(b) TESTS AND EVALUATIONS.—

''(1) IN GENERAL.—The Commandant shall ensure that the Coast Guard conducts developmental tests and evaluations and operational tests and evaluations of a capability or asset and the subsystems of the capability or asset for which a master plan has been prepared under section 572(c)(1).

''(2) USE OF THIRD PARTIES.—The Commandant shall ensure that the Coast Guard uses independent third parties with expertise in testing and evaluating the capabilities or assets and the subsystems of the capabilities or assets being acquired to conduct developmental tests and evaluations and operational tests and evaluations whenever the Coast Guard lacks the capability to conduct the tests and evaluations required by a master plan.

''(3) COMMUNICATION OF SAFETY CONCERNS.—The Commandant shall require that safety concerns identified during developmental or operational tests and evaluations or through independent or Government-conducted design assessments of capabilities or assets and subsystems of capabilities or assets to be acquired by the Coast Guard shall be communicated as soon as practicable, but not later than 30 days after the completion of the test or assessment event or activity that identified the safety concern, to the program manager for the capability or asset and the subsystems concerned and to the Chief Acquisition Officer.

''(4) ASSET ALREADY IN LOW, INITIAL, OR FULL-RATE PRODUCTION.—If operational test and evaluation on a capability or asset already in low, initial, or full-rate production identifies a safety concern with the capability or asset or any subsystems of the capability or asset not previously identified during developmental or operational test and evaluation, the Commandant shall—

''(A) notify the program manager and the Chief Acquisition Officer of the safety concern as soon as practicable, but not later than 30 days after the completion of the test and evaluation event or activity that identified the safety concern; and

''(B) notify the Chief Acquisition Officer and include in such notification—

''(i) an explanation of the actions that will be taken to correct or mitigate the safety concern in all capabilities or assets and subsystems of the capabilities or assets yet to be produced, and the date by which those actions will be taken;

''(ii) an explanation of the actions that will be taken to correct or mitigate the safety concern in previously produced capabilities or assets and subsystems of the capabilities or assets, and the date by which those actions will be taken; and

''(iii) an assessment of the adequacy of current funding to correct or mitigate the safety concern in capabilities or assets and subsystems of the capabilities or assets and in previously produced capabilities or assets and subsystems.

''(c) TECHNICAL CERTIFICATION.—

''(1) IN GENERAL.—The Commandant shall ensure that any Level 1 or Level 2 acquisition project or program is certified by the technical authority of the Coast Guard after review by an independent third party with capabilities in the mission area, asset, or particular asset component.

''(2) TEMPEST TESTING.—The Commandant shall—

''(A) cause all electronics on all aircraft, surface, and shore assets that require TEMPEST certification and that are delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 to be tested in accordance with

master plan standards and communications security standards by an independent third party that is authorized by the Federal Government to perform such testing; and

''(B) certify that the assets meet all applicable TEMPEST requirements.

''(3) VESSEL CLASSIFICATION.—The Commandant shall cause each cutter, other than the National Security Cutter, acquired by the Coast Guard and delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 is to be classed by the American Bureau of Shipping before final acceptance.

''(d) ACQUISITION DECISION.—The Commandant may not proceed to full scale production, deployment, and support of a Level 1 or Level 2 acquisition project or program unless the Department of Homeland Security Acquisition Review Board has verified that the delivered asset or system meets the project or program performance and cost goals.

''§ 574. Acquisition, production, deployment, and support

''(a) IN GENERAL.—The Commandant shall—

''(1) ensure there is a stable and efficient production and support capability to develop an asset or system;

''(2) conduct follow on testing to confirm and monitor performance and correct deficiencies; and

''(3) conduct acceptance tests and trails upon the delivery of each asset or system to ensure the delivered asset or system achieves full operational capability.

''(b) ELEMENTS.—The Commandant shall—

''(1) execute the productions contracts;

''(2) ensure the delivered products meet operational cost and schedules requirements established in the acquisition program baseline;

''(3) validate manpower and training requirements to meet system needs to operate, maintain, support, and instruct the system; and

''(4) prepare a project or program transition plan to enter into programmatic sustainment, operations, and support.

''§ 575. Acquisition program baseline breach

''(a) IN GENERAL.—The Commandant shall submit a report to the appropriate congressional committees as soon as possible, but not later than 30 days, after the Chief Acquisition Officer of the Coast Guard becomes aware of the breach of an acquisition program baseline for any Level 1 or Level 2 acquisition program, by—

''(1) a likely cost overrun greater than 15 percent of the acquisition program baseline for that individual capability or asset or a class of capabilities or assets;

''(2) a likely delay of more than 180 days in the delivery schedule for any individual capability or asset or class of capabilities or assets; or

''(3) an anticipated failure for any individual capability or asset or class of capabilities or assets to satisfy any key performance threshold or parameter under the acquisition program baseline.

''(b) CONTENT.—The report submitted under subsection (a) shall include—

''(1) a detailed description of the breach and an explanation of its cause;

''(2) the projected impact to performance, cost, and schedule;

''(3) an updated acquisition program baseline and the complete history of changes to the original acquisition program baseline;

''(4) the updated acquisition schedule and the complete history of changes to the original schedule;

''(5) a full life-cycle cost analysis for the capability or asset or class of capabilities or assets;

''(6) a remediation plan identifying corrective actions and any resulting issues or risks; and

''(7) a description of how progress in the remediation plan will be measured and monitored.

''(c) SUBSTANTIAL VARIANCES IN COSTS OR SCHEDULE.—If a likely cost overrun is greater than 25 percent or a likely delay is greater than 12 months from the costs and schedule described in the acquisition program baseline for any Level 1 or Level 2 acquisition project or program of the Coast Guard, the Commandant shall include in the report a written certification, with a supporting explanation, that—

''(1) the capability or asset or capability or asset class to be acquired under the project or program is essential to the accomplishment of Coast Guard missions;

''(2) there are no alternatives to such capability or asset or capability or asset class which will provide equal or greater capability in both a more cost-effective and timely manner;

''(3) the new acquisition schedule and estimates for total acquisition cost are reasonable; and

''(4) the management structure for the acquisition program is adequate to manage and control performance, cost, and schedule.

''SUBCHAPTER 3—DEFINITIONS

''§ 581. Definitions

''In this chapter:

''(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

''(2) CHIEF ACQUISITION OFFICER.—The term 'Chief Acquisition Officer' means the officer appointed under section 55 of this title.

''(3) COMMANDANT.—The term 'Commandant' means the Commandant of the Coast Guard.

''(4) JOINT REVIEW BOARD.—The term 'Joint Review Board' means the Department of Homeland Security's Investment Review Board, Joint Requirements Council, or other entity within the Department designated by the Secretary as the Joint Review Board for purposes of this chapter.

''(5) LEVEL 1 ACQUISITION.—The term 'Level 1 acquisition' means—

''(A) an acquisition by the Coast Guard—

''(i) the estimated life-cycle costs of which exceed $1,000,000,000; or

''(ii) the estimated total acquisition costs of which exceed $300,000,000; or

''(B) any acquisition that the Chief Acquisition Officer of the Coast Guard determines to have a special interest—

''(i) due to—

''(I) the experimental or technically immature nature of the asset;

''(II) the technological complexity of the asset;

''(III) the commitment of resources; or

''(IV) the nature of the capability or set of capabilities to be achieved; or

''(ii) because such acquisition is a joint acquisition.

''(6) LEVEL 2 ACQUISITION.—The term 'Level 2 acquisition' means an acquisition by the Coast Guard—

''(A) the estimated life-cycle costs of which are equal to or less than $1,000,000,000, but greater than $300,000,000; or

''(B) the estimated total acquisition costs of which are equal to or less than $300,000,0000, but greater than $100,000,000.

''(7) LIFE-CYCLE COST.—The term 'life-cycle cost' means all costs for development, procurement, construction, and operations and support for a particular capability or asset, without regard to funding source or management control.

''(8) SAFETY CONCERN.—The term 'safety concern' means any hazard associated with a capability or asset or a subsystem of a capability or asset that is likely to cause serious bodily injury or death to a typical Coast Guard user in testing, maintaining, repairing, or operating the capability, asset, or subsystem or any hazard associated with the capability, asset, or subsystem that is likely to cause major damage to the capability, asset, or subsystem during the course of its normal operation by a typical Coast Guard user.''.

(b) CONFORMING AMENDMENT.—The part analysis for part I of title 14, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''15. Acquisitions .....561''.

SEC. 503. REPORT AND GUIDANCE ON EXCESS PASS-THROUGH CHARGES.

(a) COMPTROLLER GENERAL REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall issue a report on pass-through charges on contracts, subcontracts, delivery orders, and task orders that were executed by a lead systems integrator under contract to the Coast Guard during the 3 full calendar years preceding the date of enactment of this Act.

(2) MATTERS COVERED.—The report under this subsection—

(A) shall assess the extent to which the Coast Guard paid excessive pass-through charges to contractors or subcontractors that provided little or no value to the performance of a contract or the production of a procured asset; and

(B) shall assess the extent to which the Coast Guard has been particularly vulnerable to excessive pass-through charges on any specific category of contracts or by any specific category of contractors.

(b) GUIDANCE REQUIRED.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Commandant shall prescribe guidance to ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are executed with a private entity acting as a lead systems integrator by or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The guidance shall, at a minimum—

(A) set forth clear standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;

(B) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and

(C) identify any exceptions determined by the Commandant to be in the best interest of the Government.

(2) SCOPE OF GUIDANCE.—The guidance prescribed under this subsection—

(A) shall not apply to any firm, fixed-price contract or subcontract, delivery order, or task order that is—

(i) awarded on the basis of adequate price competition, as determined by the Commandant; or

(ii) for the acquisition of a commercial item, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)); and

(B) may include such additional exceptions as the Commandant determines to be necessary in the interest of the United States.

(c) EXCESSIVE PASS-THROUGH CHARGE DEFINED.—In this section the term ''excessive pass-through charge'', with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is

for overhead or profit on work performed by a lower-tier contractor or subcontractor, other than reasonable charges for the direct costs of managing lower-tier contractors and subcontracts and overhead and profit based on such direct costs.

(d) APPLICATION OF GUIDANCE.—The guidance prescribed under this section shall apply to contracts awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of this Act.

TITLE VI—SHIPPING AND NAVIGATION

SEC. 601. TECHNICAL AMENDMENTS TO CHAPTER 313 OF TITLE 46, UNITED STATES CODE.

(a) IN GENERAL.—Chapter 313 of title 46, United States Code, is amended—

(1) by striking ''of Transportation'' in sections 31302, 31306, 31321, 31330, and 31343 each place it appears;

(2) by striking ''and'' after the semicolon in section 31301(5)(F);

(3) by striking ''office.'' in section 31301(6) and inserting ''office; and''; and

(4) by adding at the end of section 31301 the following:

''(7) 'Secretary' means the Secretary of the Department of Homeland Security, unless otherwise noted.''.

(b) SECRETARY AS MORTGAGEE.—Section 31308 of such title is amended by striking ''When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary'' and inserting ''The Secretary of Commerce or Transportation, as a mortgagee under this chapter,''.

(c) SECRETARY OF TRANSPORTATION.—Section 31329(d) of such title is amended by striking ''Secretary.'' and inserting ''Secretary of Transportation.''.

(d) MORTGAGEE.—

(1) Section 31330(a)(1) of such title, as amended by subsection (a)(1) of this section, is amended—

(A) by inserting ''or'' after the semicolon in subparagraph (B);

(B) by striking ''Secretary; or'' in subparagraph (C) and inserting ''Secretary.''; and

(C) by striking subparagraph (D).

(2) Section 31330(a)(2) is amended—

(A) by inserting ''or'' after the semicolon in subparagraph (B);

(B) by striking ''faith; or'' in subparagraph (C) and inserting ''faith.''; and

(C) by striking subparagraph (D).

SEC. 602. CLARIFICATION OF RULEMAKING AUTHORITY.

(a) IN GENERAL.—Chapter 701 of title 46, United States Code, is amended by adding at the end the following:

''§ 70122. Regulations

''Unless otherwise provided, the Secretary may issue regulations necessary to implement this chapter.''.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 701 of such title is amended by adding at the end the following new item:

''70122. Regulations''.

SEC. 603. ICEBREAKERS.

(a) ANALYSES.—Not later than 90 days after the date of enactment of this Act or the date of completion of the ongoing High Latitude Study to assess polar ice-breaking mission requirements, whichever occurs later, the Commandant of the Coast Guard shall require a nongovernmental, independent third party (other than the National Academy of Sciences) which has extensive experience in the analysis of military procurements to—

(1) conduct a comparative cost-benefit analysis, taking into account future Coast Guard budget projections (which assume Coast Guard budget growth of no more than inflation) and other recapitalization needs, of—

(A) rebuilding, renovating, or improving the existing fleet of polar icebreakers for operation by the Coast Guard,

(B) constructing new polar icebreakers for operation by the Coast Guard,

(C) construction of new polar icebreakers by the National Science Foundation for operation by the Foundation,

(D) rebuilding, renovating, or improving the existing fleet of polar icebreakers by the National Science Foundation for operation by the Foundation, and

(E) any combination of the activities described in subparagraph (A), (B), (C), or (D) to carry out the missions of the Coast Guard and the National Science Foundation;

(2) conduct an analysis of the impact on mission capacity and the ability of the United States to maintain a presence in the polar regions through the year 2020 if recapitalization of the polar icebreaker fleet, either by constructing new polar icebreakers or rebuilding, renovating, or improving the existing fleet of polar icebreakers, is not fully funded; and

(3) conduct a comprehensive analysis of the impact on all Coast Guard activities, including operations, maintenance, procurements, and end strength, of the acquisition of polar icebreakers described in paragraph (1) by the Coast Guard or the National Science Foundation assuming that total Coast Guard funding will not increase more than the annual rate of inflation.

(b) REPORTS TO CONGRESS.—

(1) Not later than one year and 90 days after the date of enactment of this Act or the date of completion of the ongoing High Latitude Study to assess polar ice-breaking mission requirements, whichever occurs later, the Commandant of the Coast Guard shall submit a report containing the results of the study, together with recommendations the Commandant deems appropriate under section 93(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(2) Not later than 1 year after the date of enactment of this Act, the Commandant shall submit reports containing the results of the analyses required under paragraphs (1) and (2) of subsection (a), together with recommendations the Commandant deems appropriate under section 93(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 604. PHASEOUT OF VESSELS SUPPORTING OIL AND GAS DEVELOPMENT.

Section 705 of the Security and Accountability for Every Port Act of 2006 (Public Law 109–347; 120 Stat. 1945) is amended to read as follows:

''SEC. 705. PHASEOUT OF VESSELS SUPPORTING OIL AND GAS DEVELOPMENT.

''(a) IN GENERAL.—Notwithstanding section 12111(d) of title 46, United States Code, a foreign-flag vessel may be chartered by, or on behalf of, a lessee to be employed for the setting, relocation, or recovery of anchors or other mooring equipment of a mobile offshore drilling unit that is located over the Outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)) for operations in support of exploration, or flow-testing and stimulation of wells, for offshore mineral or energy resources in the Beaufort Sea or the Chukchi Sea adjacent to Alaska—

''(1) until December 31, 2012, if the Secretary of Transportation determines, after publishing notice in the Federal Register, that insufficient vessels documented under section 12111(d) of title 46, United States Code, are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations; and

''(2) for an additional 2-year period beginning January 1, 2013, if the Secretary of Transportation determines—

''(A) that, as of December 31, 2012, the lessee has entered into a binding agreement to employ a suitable vessel or vessels to be documented under such section 12111(d) in sufficient numbers and with sufficient suitability to replace any foreign-flag vessel or vessels operating under this section; and

''(B) after publishing notice in the Federal Register, that insufficient vessels documented under such section 12111(d) are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations.

''(b) LESSEE DEFINED.—In this section, the term 'lessee' means the holder of a lease (defined in section 2(c) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(c)), who has entered into a binding agreement to employ a suitable vessel documented or to be documented under section 12111(d) of title 46, United States Code.

''(c) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to authorize employment in the coastwise trade of a vessel that does not meet the requirements set forth in section 12112 of title 46, United States Code.''.

TITLE VII—VESSEL CONVEYANCE

SEC. 701. SHORT TITLE.

This title may be cited as the ''Vessel Conveyance Act''.

SEC. 702. CONVEYANCE OF COAST GUARD VESSELS FOR PUBLIC PURPOSES.

(a) IN GENERAL.—Whenever the transfer of ownership of a Coast Guard vessel to an eligible entity for use for educational, cultural, historical, charitable, recreational, or other public purposes is authorized by law, the Coast Guard shall transfer the vessel to the General Services Administration for conveyance to the eligible entity.

(b) CONDITIONS OF CONVEYANCE.—The General Services Administration may not convey a vessel to an eligible entity as authorized by law unless the eligible entity agrees—

(1) to provide the documentation needed by the General Services Administration to process a request for aircraft or vessels under section 102.37.225 of title 41, Code of Federal Regulations;

(2) to comply with the special terms, conditions, and restrictions imposed on aircraft and vessels under section 102–37.460 of such title;

(3) to make the vessel available to the United States Government if it is needed for use by the Commandant of the Coast Guard in time of war or a national emergency; and

(4) to hold the United States Government harmless for any claims arising from exposure to hazardous materials, including asbestos and polychlorinated biphenyls, after conveyance of the vessel, except for claims arising from use of the vessel by the United States Government under paragraph (3).

(c) ELIGIBLE ENTITY DEFINED.—In this section, the term ''eligible entity'' means a State or local government, nonprofit corporation, educational agency, community development organization, or other entity that agrees to comply with the conditions established under this section.

TITLE VIII—OIL POLLUTION PREVENTION

SEC. 801. RULEMAKINGS.

(a) STATUS REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of all Coast Guard rulemakings required (but for which no final rule has been issued as of the date of enactment of this Act) under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

(2) INFORMATION REQUIRED.—The Secretary shall include in the report required in paragraph (1)—

(A) a detailed explanation with respect to each such rulemaking as to—

(i) what steps have been completed;

(ii) what areas remain to be addressed; and

(iii) the cause of any delays; and

(B) the date by which a final rule may reasonably be expected to be issued.

(b) FINAL RULES.—The Secretary shall issue a final rule in each pending rulemaking described in subsection (a) as soon as practicable, but in no event later than 18 months after the date of enactment of this Act.

(c) TOWING VESSELS.—No later than 1 year after the date of enactment of this Act, the Secretary shall issue a notice of proposed rulemaking regarding inspection requirements for towing vessels required under section 3306(j) of title 46, United States Code. The Secretary shall issue a final rule pursuant to that rulemaking no later than 2 years after the date of enactment of this Act.

SEC. 802. OIL TRANSFERS FROM VESSELS.

(a) REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations to reduce the risks of oil spills in operations involving the transfer of oil from or to a tank vessel. The regulations—

(1) shall focus on operations that have the highest risks of discharge, including operations at night and in inclement weather;

(2) shall consider—

(A) requirements for the use of equipment, such as putting booms in place for transfers, safety, and environmental impacts;

(B) operational procedures such as manning standards, communications protocols, and restrictions on operations in high-risk areas; or

(C) both such requirements and operational procedures; and

(3) shall take into account the safety of personnel and effectiveness of available procedures and equipment for preventing or mitigating transfer spills.

(b) APPLICATION WITH STATE LAWS.—The regulations promulgated under subsection (a) do not preclude the enforcement of any State law or regulation the requirements of which are at least as stringent as requirements under the regulations (as determined by the Secretary) that—

(1) applies in State waters;

(2) does not conflict with, or interfere with the enforcement of, requirements and operational procedures under the regulations; and

(3) has been enacted or promulgated before the date of enactment of this Act.

SEC. 803. IMPROVEMENTS TO REDUCE HUMAN ERROR AND NEAR MISS INCIDENTS.

(a) REPORT.—Within 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure that, using available data—

(1) identifies the types of human errors that, combined, account for over 50 percent of all oil spills involving vessels that have been caused by human error in the past 10 years;

(2) identifies the most frequent types of near-miss oil spill incidents involving vessels such as collisions, allisions, groundings, and loss of propulsion in the past 10 years;

(3) describes the extent to which there are gaps in the data with respect to the information required under paragraphs (1) and (2) and explains the reason for those gaps; and

(4) includes recommendations by the Secretary to address the identified types of errors and incidents to address any such gaps in the data.

(b) MEASURES.—Based on the findings contained in the report required by subsection (a), the Secretary shall take appropriate action, both domestically and at the International Maritime Organization, to reduce the risk of oil spills caused by human error.

(c) CONFIDENTIALITY OF VOLUNTARILY SUBMITTED INFORMATION.—The identity of a person making a voluntary disclosure under this section, and any information obtained from any such voluntary disclosure, shall be treated as confidential.

(d) DISCOVERY OF VOLUNTARILY SUBMITTED INFORMATION.—

(1) IN GENERAL.—Except as provided in this subsection, a party in a judicial proceeding may not use discovery to obtain information or data collected or received by the Secretary for use in the report required in subsection (a).

(2) EXCEPTION.—

(A) Notwithstanding paragraph (1), a court may allow discovery by a party in a judicial proceeding of information or data described in paragraph (1) if, after an in camera review of the information or data, the court decides that there is a compelling reason to allow the discovery.

(B) When a court allows discovery in a judicial proceeding as permitted under this paragraph, the court shall issue a protective order—

(i) to limit the use of the information or data to the judicial proceeding; and

(ii) to prohibit dissemination of the information or data to any person who does not need access to the information or data for the proceeding.

(C) A court may allow information or data it has decided is discoverable under this paragraph to be admitted into evidence in a judicial proceeding only if the court places the information or data under seal to prevent the use of the information or data for a purpose other than for the proceeding.

(3) APPLICATION.—Paragraph (1) shall not apply to—

(A) any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or

(B) any disclosure made with reckless disregard as to the truth or falsity of that disclosure.

SEC. 804. OLYMPIC COAST NATIONAL MARINE SANCTUARY.

(a) OLYMPIC COAST NATIONAL MARINE SANCTUARY AREA TO BE AVOIDED.—The Secretary of the Department in which the Coast Guard is operating and the Under Secretary of Commerce for Oceans and Atmosphere shall revise the area to be avoided off the coast of the State of Washington so that restrictions apply to all vessels required to prepare a response plan pursuant to section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) (other than fishing or research vessels while engaged in fishing or research within the area to be avoided).

SEC. 805. PREVENTION OF SMALL OIL SPILLS.

The Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of the Department in which the Coast Guard is operating and other appropriate agencies, shall establish an oil spill prevention and education program for small vessels. The program shall provide for assessment, outreach, and training and voluntary compliance activities to prevent and improve the effective response to oil spills from vessels and facilities not required to prepare a vessel response plan under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), including recreational vessels, commercial fishing vessels, marinas, and aquaculture facilities. The Under Secretary may provide grants to sea grant colleges and institutes designated under section 207 of the National Sea Grant College Program Act (33 U.S.C. 1126) and to State agencies, tribal governments, and other appropriate entities to carry out—

(1) regional assessments to quantify the source, incidence and volume of small oil spills, focusing initially on regions in the country where, in the past 10 years, the incidence of such spills is estimated to be the highest;

(2) voluntary, incentive-based clean marina programs that encourage marina operators, recreational boaters, and small commercial vessel operators to engage in environmentally sound operating and maintenance procedures and best management practices to prevent or reduce pollution from oil spills and other sources;

(3) cooperative oil spill prevention education programs that promote public understanding of the impacts of spilled oil and provide useful information and techniques to minimize pollution, including methods to remove oil and reduce oil contamination of bilge water, prevent accidental spills during maintenance and refueling and properly cleanup and dispose of oil and hazardous substances; and

(4) support for programs, including outreach and education to address derelict vessels and the threat of such vessels sinking and discharging oil and other hazardous substances, including outreach and education to involve efforts to the owners of such vessels.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Commerce for Oceans and Atmosphere to carry out this section, $10,000,000 for each of fiscal years 2010 through 2014.

SEC. 806. IMPROVED COORDINATION WITH TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Within 6 months after the date of enactment of this Act, the Secretary of the Department in which the Coast Guard is operating shall complete the development of a tribal consultation policy, which recognizes and protects to the maximum extent practicable tribal treaty rights and trust assets in order to improve the Coast Guard's consultation and coordination with the tribal governments of federally recognized Indian tribes with respect to oil spill prevention, preparedness, response and natural resource damage assessment.

(b) INCLUSION OF TRIBAL GOVERNMENT.—The Secretary of the Department in which the Coast Guard is operating shall ensure that, as soon as practicable after identifying an oil spill that is likely to have a significant impact on natural or cultural resources owned or directly utilized by a federally recognized Indian tribe, the Coast Guard will—

(1) ensure that representatives of the tribal government of the affected tribes are included as part of the incident command system established by the Coast Guard to respond to the spill;

(2) share information about the oil spill with the tribal government of the affected tribe; and

(3) to the extent practicable, involve tribal governments in deciding how to respond to the spill.

(c) COOPERATIVE ARRANGEMENTS.—The Coast Guard may enter into memoranda of

agreement and associated protocols with Indian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response. Such memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include—

(1) arrangements for the assistance of the tribal government to participate in the development of the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(2) arrangements for the assistance of the tribal government to develop the capacity to implement the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(3) provisions on coordination in the event of a spill, including agreements that representatives of the tribal government will be included as part of the regional response team co-chaired by the Coast Guard and the Environmental Protection Agency to establish policies for responding to oil spills;

(4) arrangements for the Coast Guard to provide training of tribal incident commanders and spill responders for oil spill preparedness and response;

(5) demonstration projects to assist tribal governments in building the capacity to protect tribal treaty rights and trust assets from oil spills; and

(6) such additional measures the Coast Guard determines to be necessary for oil pollution prevention, preparedness, and response.

(d) FUNDING FOR TRIBAL PARTICIPATION.—Subject to the availability of appropriations, the Commandant of the Coast Guard shall provide assistance to participating tribal governments in order to facilitate the implementation of cooperative arrangements under subsection (c) and ensure the participation of tribal governments in such arrangements. There are authorized to be appropriated to the Commandant $500,000 for each of fiscal years 2010 through 2014 to be used to carry out this section.

SEC. 807. REPORT ON AVAILABILITY OF TECHNOLOGY TO DETECT THE LOSS OF OIL.

Within 1 year after the date of enactment of this Act, the Secretary of the Department in which the Coast Guard is operating shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on the availability, feasibility, and potential cost of technology to detect the loss of oil carried as cargo or as fuel on tank and non-tank vessels greater than 400 gross tons.

SEC. 808. USE OF OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)) is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

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

''(B) not more than $15,000,000 in each fiscal year shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred by, and activities related to, response and damage assessment capabilities of the National Oceanic and Atmospheric Administration;''.

(b) AUDITS; ANNUAL REPORTS.—Section 1012 of the Oil Pollution Act of 1990 (33 U.S.C. 2712) is amended—

(1) by striking subsection (g) and inserting the following:

''(g) AUDITS.—

'''(1) IN GENERAL.—The Comptroller General of the United States shall conduct an audit, including a detailed accounting of each disbursement from the Fund in excess of $500,000 that is—

''(A) disbursed by the National Pollution Fund Center; and

''(B) administered and managed by the receiving Federal agencies, including final payments made to agencies and contractors and, to the extent possible, subcontractors.

''(2) FREQUENCY.—The audits shall be conducted—

''(A) at least once every 3 years after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 until 2016; and

''(B) at least once every 5 years after the last audit conducted under subparagraph (A).

''(3) SUBMISSION OF RESULTS.—The Comptroller shall submit the results of each audit conducted under paragraph (1) to—

''(A) the Senate Committee on Commerce, Science, and Transportation;

''(B) the House of Representatives Committee on Transportation and Infrastructure; and

''(C) the Secretary or Administrator of each agency referred to in paragraph (1)(B).''; and

(2) by adding at the end thereof the following:

''(h) REPORTS.—

''(1) IN GENERAL.—Within one year after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, and annually thereafter, the President, through the Secretary of the Department in which the Coast Guard is operating, shall—

''(A) provide a report on disbursements for the preceding fiscal year from the Fund, regardless of whether those disbursements were subject to annual appropriations, to—

''(i) the Senate Committee on Commerce, Science, and Transportation; and

''(ii) the House of Representatives Committee on Transportation and Infrastructure: and

''(B) make the report available to the public on the National Pollution Funds Center Internet website.

''(2) CONTENTS.—The report shall include—

''(A) a list of each disbursement of $250,000 or more from the Fund during the preceding fiscal year; and

''(B) a description of how each such use of the Fund meets the requirements of subsection (a).

''(3) AGENCY RECORDKEEPING.—Each Federal agency that receives amounts from the Fund shall maintain records describing the purposes for which such funds were obligated or expended in such detail as the Secretary may require for purposes of the report required under paragraph (1).

''(i) AUTHORIZATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out subsections (g) and (h).''.

SEC. 809. INTERNATIONAL EFFORTS ON ENFORCEMENT.

The Secretary, in consultation with the heads of other appropriate Federal agencies, shall ensure that the Coast Guard pursues stronger enforcement in the International Maritime Organization of agreements related to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

SEC. 810. HIGHER VOLUME PORT AREA REGULATORY DEFINITION CHANGE.

(a) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Commandant shall initiate a rulemaking proceeding to modify the definition of the term ''higher volume port area'' in section 155.1020 of the Coast Guard regulations (33 C.F.R. 155.1020) by striking ''Port Angeles, WA'' in paragraph (13) of that section and inserting ''Cape Flattery, WA''.

(b) EMERGENCY RESPONSE PLAN REVIEWS.—Within 5 years after the date of enactment of this Act, the Coast Guard shall complete its review of any changes to emergency response plans under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) resulting from the modification of the higher volume port area definition required by subsection (a).

SEC. 811. TUG ESCORTS FOR LADEN OIL TANKERS.

(a) COMPARABILITY ANALYSIS.—

(1) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Commandant, in consultation with the Secretary of State, shall enter into negotiations with the Government of Canada to update the comparability analysis which serves as the basis for the Cooperative Vessel Traffic Service agreement between the United States and Canada for the management of maritime traffic in Puget Sound, the Strait of Georgia, Haro Strait, Rosario Strait, and the Strait of Juan de Fuca. The updated analysis shall, at a minimum, consider—

(A) requirements for laden tank vessels to be escorted by tug boats;

(B) vessel emergency response towing capability at the entrance to the Strait of Juan de Fuca; and

(C) spill response capability throughout the shared water, including oil spill response planning requirements for vessels bound for one nation transiting in innocent passage through the waters of the other nation.

(2) CONSULTATION REQUIREMENT.—In conducting the analysis required under this subsection, the Commandant shall consult with the State of Washington and affected tribal governments.

(3) RECOMMENDATIONS.—Within 18 months after the date of enactment of this Act, the Commandant shall submit recommendations based on the analysis required under this subsection to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The recommendations shall consider a full range of options for the management of maritime traffic, including Federal legislation, promulgation of Federal rules, and the establishment of cooperative agreements for shared funding of spill prevention and response systems.

(b) DUAL ESCORT VESSELS FOR DOUBLE HULLED TANKERS IN PRINCE WILLIAM SOUND, ALASKA.—

(1) IN GENERAL.—Section 4116(c) of the Oil Pollution Act of 1990 (46 U.S.C. 3703 note) is amended—

(A) by striking ''Not later than 6 months after the date of the enactment of this Act, the'' and inserting ''(1) IN GENERAL.—The''; and

(B) by adding at the end the following:

''(2) PRINCE WILLIAM SOUND, ALASKA.—

''(A) IN GENERAL.—The requirement in paragraph (1) relating to single hulled tankers in Prince William Sound, Alaska, described in that paragraph being escorted by at least 2 towing vessels or other vessels considered to be appropriate by the Secretary (including regulations promulgated in accordance with section 3703(a)(3) of title 46, United States Code, as set forth in part 168 of title 33, Code of Federal Regulations (as in effect on March 1, 2009) implementing this subsection with respect to those tankers) shall apply to double hulled tankers over 5,000 gross tons transporting oil in bulk in Prince William Sound, Alaska.

''(B) IMPLEMENTATION OF REQUIREMENTS.—The Secretary of the Federal agency with jurisdiction over the Coast Guard shall carry out subparagraph (A) by order without notice and hearing pursuant to section 553 of title 5 of the United States Code.''.

(2) EFFECTIVE DATE.—The amendments made by subsection (b) take effect on the date that is 90 days after the date of enactment of this Act.

(c) PRESERVATION OF STATE AUTHORITY.—Nothing in this Act or in any other provision of Federal law related to the regulation of maritime transportation of oil shall affect, or be construed or interpreted as preempting, the laws or regulations of any State or political subdivision thereof in effect on the date of enactment of this Act which require the escort by one or more tugs of laden oil tankers in the areas other than Prince William Sound which are specified in section 4116(c) of the Oil Pollution Act of 1990 (46 U.S.C. 3703 note).

SEC. 812. EXTENSION OF FINANCIAL RESPONSIBILITY.

Section 1016(a) of the Oil Pollution Act of 1990 (33 U.S.C. 2716(a)) is amended—

(1) by striking ''or'' after the semicolon in paragraph (1);

(2) by inserting ''or'' after the semicolon in paragraph (2); and

(3) by inserting after paragraph (2) the following:

''(3) any tank vessel over 100 gross tons (except a non-self-propelled vessel that does not carry oil as cargo) using any place subject to the jurisdiction of the United States;''.

SEC. 813. OIL SPILL LIABILITY TRUST FUND INVESTMENT AMOUNT.

Within 30 days after the date of enactment of this Act, the Secretary of the Treasury shall increase the amount invested in income producing securities under section 5006(b) of the Oil Pollution Act of 1990 (33 U.S.C. 2736(b)) by $12,851,340.

SEC. 814. LIABILITY FOR USE OF SINGLE-HULL VESSELS.

Section 1001(32)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(32)(A)) is amended by inserting ''In the case of a vessel, the term 'responsible party' also includes the owner of oil being transported in a tank vessel with a single hull after December 31, 2010 (other than a vessel described in section 3703a(b)(3) of title 46, United States Code).'' after ''vessel.''.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. VESSEL DETERMINATION.

(a) VESSELS DEEMED TO BE NEW VESSELS.—The vessel with United States official number 981472 and the vessel with United States official number 988333 shall each be deemed to be a new vessel effective upon the date of delivery after January 1, 2008, from a privately-owned United States shipyard if no encumbrances are on record with the United States Coast Guard at the time of the issuance of the new vessel certificate of documentation for such vessel

(b) SAFETY INSPECTION.—Each vessel shall be subject to the vessel safety and inspection requirements of title 46, United States Code, applicable to any such vessel as of the day before the date of enactment of this Act.

SEC. 902. CONVEYANCE OF THE PRESQUE ISLE LIGHT STATION FRESNEL LENS TO PRESQUE ISLE TOWNSHIP, MICHIGAN.

(a) CONVEYANCE OF LENS AUTHORIZED.—

(1) TRANSFER OF POSSESSION.—Notwithstanding any other provision of law, the Commandant of the Coast Guard may transfer to Presque Isle Township, a township in Presque Isle County in the State of Michigan (in this section referred to as the ''Township''), possession of the Historic Fresnel Lens (in this section referred to as the ''Lens'') from the Presque Isle Light Station Lighthouse, Michigan (in this section referred to as the ''Lighthouse'').

(2) CONDITION.—As a condition of the transfer of possession authorized by paragraph (1), the Township shall, not later than one year after the date of transfer, install the Lens in the Lighthouse for the purpose of operating the Lens and Lighthouse as a Class I private aid to navigation pursuant to section 85 of title 14, United States Code, and the applicable regulations under that section.

(3) CONVEYANCE OF LENS.—Upon the certification of the Commandant that the Township has installed the Lens in the Lighthouse and is able to operate the Lens and Lighthouse as a private aid to navigation as required by paragraph (2), the Commandant shall convey to the Township all right, title, and interest of the United States in and to the Lens.

(4) CESSATION OF UNITED STATES OPERATIONS OF AIDS TO NAVIGATION AT LIGHTHOUSE.—Upon the making of the certification described in paragraph (3), all active Federal aids to navigation located at the Lighthouse shall cease to be operated and maintained by the United States.

(b) REVERSION.—

(1) REVERSION FOR FAILURE OF AID TO NAVIGATION.—If the Township does not comply with the condition set forth in subsection (a)(2) within the time specified in that subsection, the Township shall, except as provided in paragraph (2), return the Lens to the Commandant at no cost to the United States and under such conditions as the Commandant may require.

(2) EXCEPTION FOR HISTORICAL PRESERVATION.—Notwithstanding the lack of compliance of the Township as described in paragraph (1), the Township may retain possession of the Lens for installation as an artifact in, at, or near the Lighthouse upon the approval of the Commandant. The Lens shall be retained by the Township under this paragraph under such conditions for the preservation and conservation of the Lens as the Commandant shall specify for purposes of this paragraph. Installation of the Lens under this paragraph shall occur, if at all, not later than two years after the date of the transfer of the Lens to the Township under subsection (a)(1).

(3) REVERSION FOR FAILURE OF HISTORICAL PRESERVATION.—If retention of the Lens by the Township is authorized under paragraph (2) and the Township does not install the Lens in accordance with that paragraph within the time specified in that paragraph, the Township shall return the lens to the Coast Guard at no cost to the United States and under such conditions as the Commandant may require.

(c) CONVEYANCE OF ADDITIONAL PERSONAL PROPERTY.—

(1) TRANSFER AND CONVEYANCE OF PERSONAL PROPERTY.—Notwithstanding any other provision of law, the Commandant may transfer to the Township any additional personal property of the United States related to the Lens that the Commandant considers appropriate for conveyance under this section. If the Commandant conveys the Lens to the Township under subsection (a)(3), the Commandant may convey to the Township any personal property previously transferred to the Township under this subsection.

(2) REVERSION.—If the Lens is returned to the Coast Guard pursuant to subsection (b), the Township shall return to the Coast Guard all personal property transferred or conveyed to the Township under this subsection except to the extent otherwise approved by the Commandant.

(d) CONVEYANCE WITHOUT CONSIDERATION.—The conveyance of the Lens and any personal property under this section shall be without consideration.

(e) DELIVERY OF PROPERTY.—The Commandant shall deliver property conveyed under this section—

(1) at the place where such property is located on the date of the conveyance;

(2) in condition on the date of conveyance; and

(3) without cost to the United States.

(f) MAINTENANCE OF PROPERTY.—As a condition of the conveyance of any property to the Township under this section, the Commandant shall enter into an agreement with the Township under which the Township agrees—

(1) to operate the Lens as a Class I private aid to navigation under section 85 of title 14, United States Code, and application regulations under that section; and

(2) to hold the United States harmless for any claim arising with respect to personal property conveyed under this section.

(g) LIMITATION ON FUTURE CONVEYANCE.—The instruments providing for the conveyance of property under this section shall—

(1) require that any further conveyance of an interest in such property may not be made without the advance approval of the Commandant; and

(2) provide that, if the Commandant determines that an interest in such property was conveyed without such approval—

(A) all right, title, and interest in such property shall revert to the United States, and the United States shall have the right to immediate possession of such property; and

(B) the recipient of such property shall pay the United States for costs incurred by the United States in recovering such property.

(h) ADDITIONAL TERMS AND CONDITIONS.—The Commandant may require such additional terms and conditions in connection with the conveyances authorized by this section as the Commandant considers appropriate to protect the interests of the United States.

SEC. 903. LAND CONVEYANCE, COAST GUARD PROPERTY IN MARQUETTE COUNTY, MICHIGAN, TO THE CITY OF MARQUETTE, MICHIGAN.

(a) CONVEYANCE AUTHORIZED.—The Commandant of the Coast Guard may convey, without consideration, to the City of Marquette, Michigan (in this section referred to as the ''City''), all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, located in Marquette County, Michigan, that is under the administrative control of the Coast Guard, consists of approximately 5.5 acres, and is commonly identified as Coast Guard Station Marquette and Lighthouse Point.

(b) RETENTION OF CERTAIN EASEMENTS.—In conveying the property under subsection (a), the Commandant of the Coast Guard may retain such easements over the property as the Commandant considers appropriate for access to aids to navigation.

(c) LIMITATIONS.—The property to be conveyed by subsection (a) may not be conveyed under that subsection until—

(1) the Coast Guard has relocated Coast Guard Station Marquette to a newly constructed station;

(2) any environmental remediation required under Federal law with respect to the property has been completed; and

(3) the Commandant of the Coast Guard determines that retention of the property by the United States is not required to carry out Coast Guard missions or functions.

(d) CONDITIONS OF TRANSFER.—All conditions placed within the deed of title of the property to be conveyed under subsection (a) shall be construed as covenants running with the land.

(e) INAPPLICABILITY OF SCREENING OR OTHER REQUIREMENTS.—The conveyance of property authorized by subsection (a) shall be made without regard to the following:

(1) Section 2696 of title 10, United States Code.

(2) Chapter 5 of title 40, United States Code.

(3) Any other provision of law relating to the screening, evaluation, or administration of excess or surplus Federal property prior to conveyance by the Administrator of General Services.

(f) EXPIRATION OF AUTHORITY.—The authority in subsection (a) shall expire on the date that is five years after the date of the enactment of this Act.

(g) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Commandant of the Coast Guard. The cost of the survey shall be borne by the United States.

(h) ADDITIONAL TERMS AND CONDITIONS.—The Commandant of the Coast Guard may require such additional terms and conditions in connection with the conveyance authorized by subsection (a) as the Commandant considers appropriate to protect the interests of the United States.

SEC. 904. OFFSHORE SUPPLY VESSELS.

(a) REMOVAL OF TONNAGE LIMITS.—

(1) DEFINITION.—

(A) Section 2101(19) of title 46, United States Code, is amended by striking ''of more than 15 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title''.

(B) EXEMPTION.—Section 5209(b)(1) of the Oceans Act of 1992 (Public Law 102–587; 46 U.S.C. 2101 note) is amended by striking ''vessel.'' and inserting ''vessel of less than 500 gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of such title as prescribed by the Secretary under section 14104 of such title.''.

(2) APPLICATION.—Section 3702(b) of title 46, United States Code, is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(b) SCALE OF EMPLOYMENT: ABLE SEAMEN.—Section 7312(d) of title 46, United States Code, is amended to read as follows:

''(d) Individuals qualified as able seamen—offshore supply vessels under section 7310 of this title may constitute all of the able seamen required on board a vessel of less than 500 gross tons as measured under section 14502 of this title or an alternate tonnage as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in support of exploration, exploitation, or production of offshore mineral or energy resources. Individuals qualified as able seamen—limited under section 7308 of this title may constitute all of the able seamen required on board a vessel of at least 500 gross tons as measured under section 14502 of this title or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in support of exploration, exploitation, or production of offshore mineral or energy resources.''.

(c) MINIMUM NUMBER OF LICENSED INDIVIDUALS.—Section 8301(b) of title 46, United States Code, is amended to read as follows:

''(b)(1) An offshore supply vessel of less than 500 gross tons as measured under section 14502 of this title or 6,000 gross tons as measured under section 14302 of this title on a voyage of less than 600 miles shall have a licensed mate. If the vessel is on a voyage of at least 600 miles, however, the vessel shall have 2 licensed mates.

''(2) An offshore supply vessel shall have at least one mate. Additional mates on an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title shall be prescribed in accordance with hours of service requirements (including recording and record keeping of that service) prescribed by the Secretary.

''(3) An offshore supply vessel of more than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, may not be operated without a licensed engineer.''.

(d) WATCHES.—Section 8104(g) of title 46, United States Code, is amended—

(1) by inserting ''(1)'' after ''(g)''; and

(2) by adding at the end the following:

''(2) Paragraph (1) applies to an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title if the individuals engaged on the vessel are in compliance with hours of service requirements (including recording and record-keeping of that service) as prescribed by the Secretary.''.

(e) OIL FUEL TANK PROTECTION.—

(1) APPLICATION.—An offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title that is constructed under a contract entered into after the date of enactment of this Act, or that is delivered after August 1, 2010, with an aggregate capacity of 600 cubic meters or more of oil fuel, shall comply with the requirements of Regulation 12A under Annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, entitled *Oil Fuel Tank Protection*, regardless of whether such vessel is engaged in the coastwise trade or on an international voyage.

(2) DEFINITION.—In this subsection the term ''oil fuel'' means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried.

(f) REGULATIONS.—

(1) IN GENERAL.—Not later than January 1, 2012, the Secretary of the department in which the Coast Guard is operating shall promulgate regulations to implement the amendments and authorities enacted by this section for offshore supply vessels of at least 6,000 gross tons as measured under section 14302 of title 46, United States Code, and to ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on such vessels. The final rule issued pursuant to such rulemaking may supersede the interim final rule promulgated under paragraph (2) of this subsection. In promulgating regulations under this subsection, the Secretary shall take into consideration the characteristics of offshore supply vessels, their methods of operation, and their service in support of exploration, exploitation, or production of offshore mineral or energy resources.

(2) INTERIM FINAL RULE AUTHORITY.—As soon as is practicable and without regard to the provisions of chapters 5 and 6 of title 5, United States Code, the Secretary shall issue an interim final rule as a temporary regulation implementing this section (including the amendments made by this section) for offshore supply vessels of at least 6,000 gross tons as measured under section 14302 of title 46, United States Code, and to ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on such vessels.

(3) INTERIM PERIOD.—After the effective date of this Act, prior to the effective date of the regulations prescribed by paragraph (2) of this subsection, and without regard to the provisions of chapters 5 and 6 of title 5, United States Code, and the offshore supply vessel tonnage limits of applicable regulations and policy guidance promulgated prior to the date of enactment of this Act, the Secretary may—

(A) issue a certificate of inspection under section 3309 of title 46, United States Code, to an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title if the Secretary determines that such vessel's arrangements and equipment meet the current Coast Guard requirements for certification as a cargo and miscellaneous vessel; and

(B) authorize a master, mate or engineer who possesses an ocean or near coastal license under part 10 of subchapter B of title 46, Code of Federal Regulations, (or any successor regulation) which qualifies the licensed officer for service on offshore supply vessels of more than 3,000 gross tons, as measured under section 14302 of title 46, United States Code, to operate offshore supply vessels of 6,000 gross tons or greater, as measured under such section.

SEC. 905. ASSESSMENT OF CERTAIN AIDS TO NAVIGATION AND TRAFFIC FLOW.

(a) INFORMATION ON USAGE.—Within 60 days after the date of enactment of this Act, the Commandant of the Coast Guard shall—

(1) determine the types and numbers of vessels typically transiting or utilizing that portion of the Atlantic Intracoastal Waterway beginning at a point that is due East of the outlet of the Cutler Drain Canal C-100 in Dade County, Florida, and ending at the Dade County line, during a period of 30 days; and

(2) provide the information on usage compiled under this subsection to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(b) ASSESSMENT OF CERTAIN AIDS TO NAVIGATION.—Within 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall—

(1) review and assess the buoys, markers, and other aids to navigation in and along that portion of the Atlantic Intracoastal Waterway specified in subsection (a), to determine the adequacy and sufficiency of such aids, and the need to replace such aids, install additional aids, or both; and

(2) submit a report on the assessment required by this section to the committees.

(c) SUBMISSION OF PLAN.—Within 180 days after the date of enactment of this Act, the Commandant shall submit a plan to the committees to address the needs identified under subsection (b).

SEC. 906. ALTERNATIVE LICENSING PROGRAM FOR OPERATORS OF UNINSPECTED PASSENGER VESSELS ON LAKE TEXOMA IN TEXAS AND OKLAHOMA.

(a) IN GENERAL.—Upon the request of the Governor of the State of Texas or the Governor of the State of Oklahoma, the Secretary of the department in which the Coast Guard is operating shall enter into an agreement with the Governor of the State whereby the State shall license operators of uninspected passenger vessels operating on Lake Texoma in Texas and Oklahoma in lieu of the Secretary issuing the license pursuant to section 8903 of title 46, United States Code, and the regulations issued thereunder, but only if the State plan for licensing the operators of uninspected passenger vessels—

(1) meets the equivalent standards of safety and protection of the environment as those contained in subtitle II of title 46, United States Code, and regulations issued thereunder;

(2) includes—
(A) standards for chemical testing for such operators;
(B) physical standards for such operators;
(C) professional service and training requirements for such operators; and
(D) criminal history background check for such operators;
(3) provides for the suspension and revocation of State licenses;
(4) makes an individual, who is ineligible for a license issued under title 46, United States Code, ineligible for a State license; and
(5) provides for a report that includes—
(A) the number of applications that, for the preceding year, the State rejected due to failure to—
(i) meet chemical testing standards;
(ii) meet physical standards;
(iii) meet professional service and training requirements; and
(iv) pass criminal history background check for such operators;
(B) the number of licenses that, for the preceding year, the State issued;
(C) the number of license investigations that, for the preceding year, the State conducted;
(D) the number of licenses that, for the preceding year, the State suspended or revoked, and the cause for such suspensions or revocations; and
(E) the number of injuries, deaths, collisions, and loss or damage associated with uninspected passenger vessels operations that, for the preceding year, the State investigated.
(b) ADMINISTRATION.—
(1) The Governor of the State may delegate the execution and enforcement of the State plan, including the authority to license and the duty to report information pursuant to subsection (a), to any subordinate State officer. The Governor shall provide, to the Secretary, written notice of any delegation.
(2) The Governor (or the Governor's designee) shall provide written notice of any amendment to the State plan no less than 45 days prior to the effective date of such amendment.
(3) At the request of the Secretary, the Governor of the State (or the Governor's designee) shall grant, on a biennial basis, the Secretary access to State records and State personnel for the purpose of auditing State execution and enforcement of the State plan.
(c) APPLICATION.—
(1) The requirements of section 8903 of title 46, United States Code, and the regulations issued thereunder shall not apply to any person operating under the authority of a State license issued pursuant to an agreement under this section.
(2) The State shall not compel a person, operating under the authority of a license issued either by another State, pursuant to a valid agreement under this section, or by the Secretary, pursuant to section 8903 of title 46, United States Code, to—
(A) hold a license issued by the State, pursuant to an agreement under this section; or
(B) pay any fee, associated with licensing, because the person does not hold a license issued by the State, pursuant to an agreement under this section.

Nothing in this paragraph shall limit the authority of the State to impose requirements or fees for privileges, other than licensing, that are associated with the operation of uninspected passenger vessels on Lake Texoma.

(3) For the purpose of enforcement, if an individual is issued a license—
(A) by a State, pursuant to an agreement entered into under to this section, or
(B) by the Secretary, pursuant to section 8903 of title 46, United States Code,

then the individual shall be entitled to lawfully operate an uninspected passenger vessel on Lake Texoma in Texas and Oklahoma without further requirement to hold an additional operator's license.
(d) TERMINATION.—
(1) If—
(A) the Secretary finds that the State plan for the licensing the operators of uninspected passenger vessels—
(i) does not meet the equivalent standards of safety and protection of the environment as those contained in subtitle II of title 46, United States Code, and regulations issued thereunder,
(ii) does not include—
(I) standards for chemical testing for such operators,
(II) physical standards for such operators,
(III) professional service and training requirements for such operators, or
(IV) background and criminal investigations for such operators,
(iii) does not provide for the suspension and revocation of State licenses, or
(iv) does not make an individual, who is ineligible for a license issued under title 46, United States Code, ineligible for a State license, or
(B) the Governor (or the Governor's designee) fails to report pursuant to subsection (b),

the Secretary shall terminate the agreement authorized by this section, if the Secretary provides written notice to the Governor of the State 60 days in advance of termination. The findings of fact and conclusions of the Secretary, if based on a preponderance of the evidence, shall be conclusive.
(2) The Governor of the State may terminate the agreement authorized by this section, if the Governor provides written notice to the Secretary 60 days in advance of the termination date.
(e) EXISTING AUTHORITY.—Nothing in this section shall affect or diminish the authority or jurisdiction of any Federal or State officer to investigate, or require reporting of, marine casualties.
(f) UNINSPECTED PASSENGER VESSEL DEFINED.—In this section the term ''uninspected passenger vessel'' has the meaning that term has in section 2101(42)(B) of title 46, United States Code.

TITLE X—BUDGETARY EFFECTS

SEC. 1001. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SA 3913. Mr. WHITEHOUSE (for Mr. GREGG) proposed an amendment to the resolution S. Res. 480, condemning the continued detention of Burmese democracy leader Daw Aung San Suu Kyi and calling on the military regime in Burma to permit a credible and fair election process and the transition to civilian, democratic rule; as follows:

On page 2, beginning on line 7, strike ''the National League for Democracy and other opposition groups,'' and insert ''all political groups and individuals dedicated to democratic ideals,''.

On page 3, beginning on line 9, strike ''(including the People's Republic of China, the Association of Southeast Asian Nations, and the United Nations Security Council)'' and insert '', as appropriate, in order''.

On page 3, line 17, strike ''the National League for Democracy and''.

SA 3914. Mr. CHAMBLISS 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:

Beginning on page 539, strike line 14 and all that follows through page 541, line 24, and insert the following:

''(33) MAJOR SWAP PARTICIPANT.—
''(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—
''(i)(I) maintains a substantial net position in swaps for any of the major swap categories as determined by the Commission, excluding—
''(aa) positions held for hedging or mitigating commercial risk, including operating risk and balance sheet risk, of such person or its affiliates; and
''(bb) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; and
''(II) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or
''(ii)(I) is a financial entity, other than an entity predominantly engaged in providing customer financing for the purchase of an affiliate's merchandise or manufactured goods, that is highly leveraged relative to the amount of capital it holds;
''(II) maintains a substantial net position in outstanding swaps in any major swap category as determined by the Commission; and
''(III) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.
''(B) DEFINITION OF SUBSTANTIAL NET POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term 'substantial net position' to mean a position after application of legally enforceable netting or collateral arrangements that meets a threshold the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.
''(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.
''(D) CAPITAL.—In setting capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by

virtue of the status of the person as a major swap participant.'';

SA 3915. Mr. CHAMBLISS 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:

Beginning on page 555, strike line 16 and all that follows through page 557, line 2, and insert the following:

''(49) SWAP DEALER.—

''(A) IN GENERAL.—The term 'swap dealer' means any person who—

''(i) holds itself out as a dealer in swaps;

''(ii) makes a market in swaps;

''(iii) regularly engages in the purchase and sale of swaps to customers as its ordinary course of business; and

''(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

''(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

''(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a swap dealer.

''(D) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, or on behalf of any affiliates of such person, unless it does so as a market maker and as a part of a regular business.

SA 3916. Mr. CHAMBLISS 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:

Beginning on page 566, strike line 8 and all that follows through page 584, line 7, and insert the following:

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

''(h) CLEARING REQUIREMENT.—

''(1) OPEN ACCESS.—The rules of a registered derivatives clearing organization shall—

''(A) prescribe that all swaps with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization; and

''(B) provide for nondiscriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility, subject to the requirements of section 5(b).

''(2) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall, jointly with the Securities and Exchange Commission and the Federal Reserve Board of Governors, adopt rules to establish criteria for determining that a swap or group, category, type, or class of swap is required to be cleared.

''(B) FACTORS.—In carrying out subparagraph (A), the following factors shall be considered:

''(i) Whether 1 or more derivatives clearing organizations or clearing agencies accepts the swap or group, category, type, or class of swap for clearing.

''(ii) Whether the swap or group, category, type, or class of swap is traded pursuant to standard documentation and terms.

''(iii) The liquidity of the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof.

''(iv) The ability to value the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices.

''(v) The size of the market for the swap or group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing.

''(vi) Whether a clearing mandate would mitigate risk to the financial system or whether it would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency.

''(vii) Such other factors as the Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors jointly may determine are relevant.

''(C) SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

''(i) shall review each swap, or any group, category, type, or class of swap that is currently listed for clearing and those which a derivatives clearing organization notifies the Commission that the derivatives clearing organization plans to list for clearing after the date of enactment of this subsection;

''(ii) except as provided in paragraph (3), may require, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, that a particular swap, group, category, type, or class of swap must be cleared; and

''(iii) shall rely on economic analysis provided by economists of the Commission in making any determination under clause (ii).

''(D) EFFECT.—

''(i) IN GENERAL.—Nothing in this paragraph affects the ability of a derivatives clearing organization to list for permissive clearing any swap, or group, category, type, or class of swaps.

''(ii) PROHIBITION.—The Commission shall not compel a derivatives clearing organization to list a swap, group, category, type, or class of swap for clearing if the derivatives clearing organization determines that the swap, group, category, type, or class of swap would adversely impact its business operations, or impair the financial integrity of the derivatives clearing organization.

''(iii) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of subparagraph (C), if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) of this Act will accept the swap for clearing.

''(E) PREVENTION OF EVASION.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under subparagraph (C). In issuing such rules or interpretations, the Commission shall consider—

''(i) the extent to which the terms of the swap, group, category, type, or class of swap are similar to the terms of other swaps, groups, categories, types, or classes of swap that are required to be cleared by swap participants under subparagraph (C); and

''(ii) whether there is an economic purpose for any differences in the terms of the swap or group, category, type, or class of swap that are required to be cleared by swap participants under subparagraph (C).

''(F) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, rescind a requirement imposed under subparagraph (C) with respect to a swap, group, category, type, or class of swap.

''(G) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission use its authority under subparagraph (C) to require clearing of a particular swap, group, category, type, or class of swap or to use its authority under subparagraph (F) to rescind a requirement for swap participants to clear a particular swap, group, category, type, or class of swap.

''(H) FOREIGN EXCHANGE FORWARDS, SWAPS, AND OPTIONS.—Foreign exchange forwards, swaps, and options shall not be subject to a clearing requirement under subparagraph (C) unless the Department of the Treasury and the Board of Governors determine that such a requirement is appropriate after considering whether there exists an effective settlement system for such foreign exchange forwards, swaps, and options and any other factors that the Department of the Treasury and the Board of Governors deem to be relevant.

''(3) END USER CLEARING EXEMPTION.—

''(A) DEFINITIONS.—In this paragraph:

''(i) COMMERCIAL END USER.—The term 'commercial end user' means any person who, as its primary business activity owns, operates, uses, produces, processes, develops, leases, manufacturers, distributes, merchandises, provides or markets goods, services, physical assets, or commodities (which shall include but not be limited to coal, natural gas, electricity, biofuels, crude oil, gasoline, propane, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.

''(ii) FINANCIAL ENTITY END USER.—

''(I) IN GENERAL.—The term 'financial entity end user' means any person predominately engaged in activities that are financial in nature, as determined by the Commission.

''(II) EXCLUSIONS.—The term 'financial entity end user' does not include—

''(aa) any person who is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant;

''(bb) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act o f 1940 (15

U.S.C. 80a-3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets;

''(cc) entities defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20));

''(dd) a commodity pool; or

''(ee) a commercial end user.

''(B) END USER CLEARING EXEMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), in the event that a swap is subject to the mandatory clearing requirement under paragraph (2), and 1 of the counterparties to the swap is a commercial end user or a financial entity end user, that counterparty—

''(I)(aa) may elect not to clear the swap, as required under paragraph (2); or

''(bb) may elect, prior to entering into the swap transaction, to require clearing of the swap; and

''(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

''(ii) LIMITATION.—A commercial end user or a financial entity end user may only make an election under clause (i) if the end user is using the swap to hedge commercial risk, including operating risk and balance sheet risk.

''(C) TREATMENT OF AFFILIATES.—

''(i) IN GENERAL.—An affiliate of a commercial end user (including affiliate entities predominated engaged in providing financing for the purchase of merchandise or manufactured goods of the commercial end user) or a financial entity end user may make an election under subparagraph (B)(i) only if the affiliate uses the swap to hedge or mitigate the commercial risk, including operating risk and balance sheet risk, of the commercial end user or the financial entity end user or other affiliate of the commercial end user or financial entity end user.

''(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user or a financial entity end user shall not use the exemption under subparagraph (B) if the affiliate is—

''(I) a swap dealer;

''(II) a security-based swap dealer;

''(III) a major swap participant;

''(IV) a major security-based swap participant;

''(V) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act o f 1940 (15 U.S.C. 80a-3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets; or

''(VI) a commodity pool.

''(D) ABUSE OF EXEMPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B). The Commission may also request information from those entities claiming the clearing exemption as necessary to prevent abuse of the exemption described in subparagraph (B).

''(4) REQUIRED REPORTING.—Each swap that is not cleared by any derivatives clearing organization shall be reported either to a registered swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r.

''(5) TRANSITION RULES.—

''(A) REPORTING TRANSITION RULES.—The Commission shall provide for the reporting of data, as follows:

''(i) SWAPS ENTERED INTO BEFORE DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission not later than 180 days after the effective date of this subsection.

''(ii) SWAPS ENTERED INTO ON OR AFTER DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission not later than such time period as the Commission prescribe.

''(B) CLEARING TRANSITION RULES.—Swaps entered into before the effective date of any requirement under paragraph (2)(C) are exempt from the clearing requirements of this subsection.

''(6) REPORTING OBLIGATIONS.—

''(A) SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (4) and (5).

''(B) SWAPS IN WHICH 1 COUNTERPARTY IS A SWAP DEALER AND THE OTHER A MAJOR SWAP PARTICIPANT.—With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (4) and (5).

''(C) OTHER SWAPS.—With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (4) and (5).''.

SA 3917. Mr. CHAMBLISS 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 580, line 1, insert after ''commercial end user'' the following: ''or a lending institution cooperatively owned by and primarily serving agricultural producers, agricultural cooperatives, or rural electric cooperatives''.

SA 3918. Ms. SNOWE (for herself and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1272, line 2, strike ''services who'' and insert ''services, but only to the extent that such person''.

On page 1272, line 22, strike ''(C)'' and insert ''(C)(i)''.

On page 1273, strike line 19 and insert the following:

''(C) LIMITATIONS.—

''(i) IN GENERAL.—Notwithstanding sub-''.

On page 1273, line 20, after ''subparagraph (B)'' insert '', and except as provided in clause (ii)''.

On page 1274, between lines 2 and 3, insert the following:

''(ii) EXCEPTION.—Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services, to the extent that such person is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.''.

On page 1274, strike line 3 and all that follows through ''may'' on line 4 and insert the following:

''(D) RULES.—

''(i) AUTHORITY OF OTHER AGENCIES.—No provision of this title shall''.

On page 1274, between lines 13 and 14, insert the following:

''(ii) SMALL BUSINESSES.—A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person—

''(I) only extends credit for the sale of nonfinancial goods or services, as described in subparagraph (A)(i);

''(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

''(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

''(iii) INITIAL YEAR.—A merchant, retailer, or seller of nonfinancial goods or services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the receipts of that business concern reasonably are expected to meet that size threshold.

''(E) EXCEPTION FROM STATE ENFORCEMENT.—To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title may be brought under subsection 1042(a), with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.''.

SA 3919. Mr. CONRAD (for himself, Mr. CRAPO, Mr. BARRASSO, Mr. KERRY, Mr. BROWN of Massachusetts, Ms. SNOWE, Ms. LANDRIEU, Mr. DORGAN, Mr. ROBERTS, Mr. ENZI, Mrs. MCCASKILL, Ms. COLLINS, Ms. CANTWELL, and 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 466, line 13, strike ''bank'' and all that follows through ''association'' on line 15 and insert the following: ''bank having total assets of more than $10,000,000,000, in the same manner and to the same extent as if the insured State bank were a national banking association. For purposes of determining total assets under this subsection, the Corporation shall rely on the same regulations and interim methodologies specified in section 312(e) of the Restoring American Financial Stability Act of 2010''.

SA 3920. Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. NELSON of Nebraska, Mr. JOHANNS, and Mr. LEAHY) 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 V, add the following:

Subtitle C—Fixed Annuities and Insurance Products Classification

SEC. 551. SHORT TITLE.

This subtitle may be cited as the ''Fixed Indexed Annuities and Insurance Products Classification Act of 2010''.

SEC. 552. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Primary jurisdiction for regulating life insurance and annuities is vested with the States and Territories of the United States and the District of Columbia.

(2) Indexed insurance and annuity products offered by insurance companies are subject to a wide array of laws and regulations enforced by States and applicable jurisdictions, including nonforfeiture requirements that provide for minimum guaranteed values, thereby protecting consumers against market related losses.

(3) Adoption of Rule 151A by the Securities and Exchange Commission, entitled ''Indexed Annuities and Certain Other Insurance Products'', 74 Fed. Reg. 3138 (January 16, 2009), interferes with State insurance regulation, harms the insurance industry, reduces competition, restricts consumer choice, creates unnecessary and excessive regulatory burdens, and diverts Commission resources, all of which outweighs any perceived benefits.

(b) PURPOSE.—The purpose of this subtitle is to nullify rule 151A and clarify the scope of the exemption for annuities and insurance contracts from Federal regulation under the Securities Act of 1933.

SEC. 553. SCOPE OF EXEMPTION FROM FEDERAL SECURITIES REGULATION.

Section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) is amended by inserting before the semicolon the following: '', and any insurance or endowment policy or annuity contract or optional annuity contract—

''(A) the value of which does not vary according to the performance of a separate account; and

''(B) which satisfies standard nonforfeiture laws or similar requirements of the applicable State, Territory, or District of Columbia at time of issue, or in the absence of applicable standard nonforfeiture laws or requirements, satisfies the Model Standard Nonforfeiture Law for Life Insurance or Model Standard Nonforfeiture Law for Individual Deferred Annuities, or any successor model law, as published by the National Association of Insurance Commissioners''.

SEC. 554. NULLIFICATION OF CERTAIN FEDERAL SECURITIES REGULATIONS.

Rule 151A promulgated by the Securities and Exchange Commission and entitled ''Indexed Annuities and Certain Other Insurance Contracts'', 74 Fed. Reg. 3138 (January 16, 2009), shall have no force or effect.

SA 3921. 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 ''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 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 beginning on line 24, strike '', to support its examination activities under subsection (c), and''.

On page 1268, strike line 24 and all that follows through page 1269, line 19 and insert the following:

(c) ENFORCEMENT.—

On page 1270, line 13, strike ''(e)'' and insert ''(d)''.

On page 1345, beginning on line 1, strike '', 1025, and 1026'' and insert ''and 1025''.

NOTICE OF INTENT TO OBJECT TO PROCEEDING ON MAY 5, 2010

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of Walter Isaacson, of Louisiana, to be Chairman of the Broadcasting Board of Governors, dated May 5, 2010, for the following reasons:

I have had longstanding concerns regarding transparency and effectiveness of our taxpayer-funded international broadcasting agencies under the purview of the Broadcasting Board of Governors. In particular, I am troubled by the operations and management of Voice of America (VOA) given issues raised by the media, Inspector General, and former employees of VOA. Therefore, I have requested to meet with all the prospective nominees to discuss these issues. The Broadcasting Board of Governors performs a vital role regarding oversight and management of our international broadcasting. As the nation faces threats from the Middle East and in fact throughout the world, transparent and effective international broadcasting agencies are critical to ensuring our international broadcasts are in fact fulfilling America's interests in securing peace for ourselves and our allies.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of Victor Ashe of Tennessee, to be member of the Broadcasting Board of Governors, dated May 5, 2010, for the reasons denoted above.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of Michael Lynton of California, to be member of the Broadcasting Board of Governors, dated May 5, 2010, for the reasons denoted above.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I object to proceeding to the nomination of Susan McCue of Virginia, to be member of casting Board of Governors, dated May 5, 2010, for the reasons denoted above.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of Dennis Mulhaupt of California, to be member of the Broadcasting Board of Governors, dated May 5, 2010, for the reasons denoted above.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of S. Enders Wimbush of Virginia, to be member of the Broadcasting Board of Governors, dated May 5, 2010, for the reasons denoted above.

NOTICE: PUBLIC FINANCIAL DISCLOSURE REPORTS

The filing date for the 2009 Public Financial Disclosure reports is Monday, May 17, 2010. Senators, political fund designees and staff members whose salaries exceed 120% of the GS–15 pay scale must file reports.

Public Financial Disclosure reports should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, D.C. 20510.

The Public Records office will be open from 9 a.m. to 6 p.m. on the filing date to accept these filings. For further information, please contact the Public Records office at (202) 224–0322.

THE CALENDAR

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that it be in order for the Senate to proceed en bloc to consideration of the following calendar items: Calendar No. 261, S. Res. 297; Calendar No. 262, S. Res. 275; Calendar No. 287, S. 1053; Calendar No. 291, S. 1405; Calendar No. 295, H.R. 689; Calendar No. 297, H.R. 1121; Calendar No. 300, H.R. 1442; Calendar No. 305, H.R. 2802.

ENSIGN) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of amendment No. 3920 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 519—EXPRESSING THE SENSE OF THE SENATE THAT THE PRIMARY SAFEGUARD FOR THE WELL-BEING AND PROTECTION OF CHILDREN IS THE FAMILY, AND THAT THE PRIMARY SAFEGUARDS FOR THE LEGAL RIGHTS OF CHILDREN IN THE UNITED STATES ARE THE CONSTITUTIONS OF THE UNITED STATES AND THE SEVERAL STATES, AND THAT, BECAUSE THE USE OF INTERNATIONAL TREATIES TO GOVERN POLICY IN THE UNITED STATES ON FAMILIES AND CHILDREN IS CONTRARY TO PRINCIPLES OF SELF-GOVERNMENT AND FEDERALISM, AND THAT, BECAUSE THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD UNDERMINES TRADITIONAL PRINCIPLES OF LAW IN THE UNITED STATES REGARDING PARENTS AND CHILDREN, THE PRESIDENT SHOULD NOT TRANSMIT THE CONVENTION TO THE SENATE FOR ITS ADVICE AND CONSENT

Mr. DEMINT submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 519

Whereas the Senate affirms the commitment of the people and the Government of the United States to the well-being, protection, and advancement of children, and the protection of the inalienable rights of all persons of all ages;

Whereas the Constitution and laws of the United States and those of the several States are the best guarantees against mistreatment of children in this Nation;

Whereas the Constitution, laws, and traditions of the United States affirm the rights of parents to raise their children and to impart their values and religious beliefs;

Whereas the United Nations Convention on the Rights of the Child, adopted at New York November 20, 1989, and entered into force September 2, 1990, if ratified, would become a part of the supreme law of the land, taking precedence over all State laws and constitutions;

Whereas the United States, and not the several States, would be held responsible for compliance with this Convention if ratified, and as a consequence, the United States would create an incredible expansion of subject matter jurisdiction over all matters concerning children, seriously undermining the constitutional balance between the Federal Government and the governments of the several States;

Whereas Professor Geraldine Van Bueren, the author of the principal textbook on the international rights of the child, and a participant in the drafting of the Convention, has described the ''best interest of the child standard'' in the treaty as ''provid[ing] decision and policy makers with the authority to substitute their own decisions for either the child's or the parents'';

Whereas the Scottish Government has issued a pamphlet to children of that country explaining their rights under the Convention, which declares that children have the right to decide their own religion and that parents can only provide advice;

Whereas the United Nations Committee on the Rights of the Child has repeatedly interpreted the Convention to ban common disciplinary measures utilized by parents;

Whereas the Government of the United Kingdom was found to be in violation of the Convention by the United Nations Committee on the Rights of the Child for allowing parents to exercise a right to opt their children out of sex education courses in the public schools without a prior government review of the wishes of the child;

Whereas the United Nations Committee on the Rights of the Child has held that the Governments of Indonesia and Egypt were out of compliance with the Convention because military expenditures were given inappropriate priority over children's programs;

Whereas these and many other interpretations of the Convention by those charged with its implementation and by other authoritative supporters demonstrates that the provisions of the United Nations Convention on the Rights of the Child are utterly contrary to the principles of law in the United States and the inherent principles of freedom;

Whereas the decisions and interpretations of the United Nations Committee on the Rights of the Child would be considered by the Committee to be binding and authoritative upon the United States should the United States Government ratify the Convention, such that the Convention poses a threat to the sovereign rights of the United States and the several States to make final determinations regarding domestic law; and

Whereas the proposition that the United States should be governed by international legal standards in its domestic policy is tantamount to proclaiming that the Congress of the United States and the legislatures of the several States are incompetent to draft domestic laws that are necessary for the proper protection of children, an assertion that is not only an affront to self-government but an inappropriate attack on the capability of legislators in the United States: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United Nations Convention on the Rights of the Child, adopted at New York November 20, 1989, and entered into force September 2, 1990, is incompatible with the Constitution, the laws, and the traditions of the United States;

(2) the Convention would undermine proper presumptions of freedom and independence for families in the United States, supplanting those principles with a presumption in favor of governmental intervention without the necessity for proving harm or wrongdoing;

(3) the Convention would interfere with the principles of sovereignty, independence, and self-government in the United States that preclude the necessity or propriety of adopting international law to govern domestic matters; and

(4) the President should not transmit the Convention to the Senate for its advice and consent.

SENATE RESOLUTION 520—HONORING THE 100TH ANNIVERSARY OF THE ESTABLISHMENT OF GLACIER NATIONAL PARK

Mr. BAUCUS (for himself and Mr. TESTER) submitted the following resolution; which was considered and agreed to:

S. RES. 520

Whereas Glacier National Park was established as the 10th National Park on May 11, 1910;

Whereas Glacier National Park is part of the Waterton-Glacier International Peace Park, the world's first international peace park;

Whereas Glacier National Park has a total of 25 named glaciers;

Whereas water originating in the park is considered the headwaters of three major drainages;

Whereas Glacier National Park is the core of the ''Crown of the Continent Ecosystem'', one of the country's largest intact ecosystems;

Whereas Glacier National Park encompasses over 1,000,000 acres, 762 lakes, more than 60 native species of mammals, 277 species of birds, and almost 2,000 plant species;

Whereas Glacier National Park's lands hold great spiritual importance to the Blackfeet and the Salish and Kootenai native peoples;

Whereas the Park contains 110 miles of the Continental Divide Trail;

Whereas the Going-to-the-Sun Road in Glacier National Park was completed in 1932 and is a National Historic Civil Engineering Landmark;

Whereas in 1976 Glacier was dedicated a Biosphere Reserve by UNESCO;

Whereas in 1995 Waterton-Glacier International Peace Park was designated a World Heritage Site; and

Whereas Glacier National Park receives approximately 2,000,000 visitors a year: Now, therefore, be it

Resolved, That the people of the United States should observe and celebrate the 100th anniversary of the establishment of Glacier National Park in Montana on May 11, 2010.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3922. Mr. MERKLEY (for himself, Mr. BROWN, of Ohio, Mrs. BOXER, Mr. FEINGOLD, Ms. SNOWE, and Mr. SANDERS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3923. Mr. SCHUMER (for himself, Mr. REID, Mr. AKAKA, 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 3924. 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 3925. Mr. SHELBY submitted an amendment intended to be proposed to amendment

SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3926. Ms. STABENOW (for herself, Mr. BENNETT, Mr. HATCH, 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 3927. Mr. LEAHY 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 3928. Mr. BENNET (for himself, Mr. TESTER, Mr. ISAKSON, Ms. KLOBUCHAR, Mr. BEGICH, Mr. UDALL, of Colorado, and Mr. LEMIEUX) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3929. 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 3930. 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 3931. Mr. MERKLEY (for himself, Mr. LEVIN, Mr. BROWN, of Ohio, Mr. KAUFMAN, Mrs. SHAHEEN, Mrs. FEINSTEIN, Mr. CASEY, Mr. NELSON, of Florida, Mr. BURRIS, Mr. BEGICH, Mr. INOUYE, Mr. WHITEHOUSE, Mrs. MCCASKILL, Mr. UDALL, of Colorado, Ms. MIKULSKI, Mr. SANDERS, Mr. UDALL, of New Mexico, and Mr. REID) 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 3932. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3933. 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 3934. Mr. SCHUMER (for himself and Mrs. GILLIBRAND) 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 3935. Mrs. GILLIBRAND 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 3936. Mrs. GILLIBRAND 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 3937. Ms. LANDRIEU (for herself, Mr. CHAMBLISS, and Mr. ISAKSON) 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 3922. Mr. MERKLEY (for himself, Mr. BROWN of Ohio, Mrs. BOXER, Mr. FEINGOLD, Ms. SNOWE, and Mr. SANDERS) 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 stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fall'', 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 392, strike line 6 and all that follows through the matter following line 2 on page 409, and insert the following:

''(D) to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating Covered Agreements;

''(E) to determine, in accordance with subsection (f), whether State insurance measures are preempted by Covered Agreements;

''(F) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance; and

''(G) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

''(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

''(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as such insurance is determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), and crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

''(e) GATHERING OF INFORMATION.—

''(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office may—

''(A) receive and collect data and information on and from the insurance industry and insurers;

''(B) enter into information-sharing agreements;

''(C) analyze and disseminate data and information; and

''(D) issue reports regarding all lines of insurance except health insurance.

''(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—

''(A) IN GENERAL.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or information as the Office may reasonably require in carrying out the functions described under subsection (c).

''(B) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, for purposes of subparagraph (A), the term 'insurer' means any person that is authorized to write insurance or reinsure risks and issue contracts or policies in 1 or more States.

''(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that the Office may establish, whether by order or rule.

''(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or any affiliate of an insurer, the Office shall coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) to determine if the information to be collected is available from, or may be obtained in a timely manner by, such State insurance regulator, individually or collectively, another regulatory agency, or publicly available sources. Notwithstanding any other provision of law, each such relevant State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

''(5) CONFIDENTIALITY.—

''(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

''(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

''(C) INFORMATION SHARING AGREEMENT.—Any data or information obtained by the Office may be made available to State insurance regulators, individually or collectively, through an information sharing agreement that—

''(i) shall comply with applicable Federal law; and

''(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

''(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

''(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2), but only upon a written finding by the Director that such data or information is required to carry out the functions described under subsection (c) and that the Office has coordinated with such regulator or agency as required under paragraph (4). Subpoenas shall bear the signature of the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

''(f) PREEMPTION OF STATE INSURANCE MEASURES.—

''(1) STANDARD.—A State insurance measure shall be preempted if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

''(A) directly treats less favorably a non-United States insurer domiciled in a foreign jurisdiction that is subject to a Covered Agreement than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

''(B) is inconsistent with a Covered Agreement.

''(2) DETERMINATION.—

''(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Director shall—

''(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

''(ii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable Covered Agreements;

''(iii) provide interested parties a reasonable opportunity to submit written comments to the Office;

''(iv) consider any comments received; and

''(v) consider the effect of preemption on—

''(I) the protection of policyholders and policy claimants;

''(II) the maintenance of the safety, soundness, integrity, and financial responsibility of any entity involved in the business of insurance or insurance operations;

''(III) ensuring the integrity and stability of the United States financial system; and

''(IV) the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States; and

''(B) SCOPE OF REVIEW.—For purposes of this subsection, the determination of the Director regarding State insurance measures shall be limited to the subject matter contained within the Covered Agreement involved.

''(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

''(i) notify the appropriate State of the determination and the extent of the inconsistency;

''(ii) establish a reasonable period of time, which shall not be less than 90 days, before the determination shall become effective;

''(iii) notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the inconsistency; and

''(iv) cause to be published in the Federal Register notice of the determination and the extent of the inconsistency.

''(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

''(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

''(B) notify the appropriate State.

''(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

''(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

''(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies, and procedures to implement this section.

''(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually or collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

''(j) SAVINGS PROVISIONS.—Nothing in this section shall—

''(1) preempt—

''(A) any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices;

''(B) any State coverage requirements for insurance;

''(C) the application of the antitrust laws of any State to the business of insurance; or

''(D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure directly treats a non-United States insurer less favorably than a United States insurer and in that case only to the extent of the less favorable treatment of the non-United States insurer domiciled in a foreign jurisdiction that is subject to a Covered Agreement;

''(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or

''(3) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

''(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

''(l) ANNUAL REPORT TO CONGRESS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the insurance industry, any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures), the status of international insurance prudential matters and negotiations, including on standard-setting, and any other information as deemed relevant by the Director or as requested by such Committees.

''(m) STUDY AND REPORT ON REGULATION OF INSURANCE.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Government Accountability Office shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

''(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

''(A) Systemic risk regulation with respect to insurance.

''(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk.

''(C) Consumer protection for insurance products and practices, including gaps in state regulation.

''(D) The degree of national uniformity of State insurance regulation, including the feasability and costs and benefits of alternative Federal or State actions, such as interstate compacts, that would encourage the States to accomplish the regulatory goal of uniformity that may be identified as being achieved through any proposed Federal regulation of insurance.

''(E) The regulation of insurance companies and affiliates on a consolidated basis.

''(F) International coordination of insurance regulation.

''(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

''(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

''(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

''(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

''(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

''(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

''(F) The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority—

''(i) on the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

''(ii) on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

''(iii) in the case of life insurance companies, the loss of the special status of separate account assets and separate account liabilities; and

''(iv) on the international competitiveness of insurance companies.

''(G) Such other factors as the Government Accountability Office determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

''(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall also contain any legislative, administrative, or regulatory recommendations, as the Government Accountability Office determines appropriate, to carry out or effectuate the findings set forth in such report.

''(5) CONSULTATION.—With respect to the study and report required under paragraph (1), the Government Accountability Office shall consult with the National Association of Insurance Commissioners, consumer organizations, representatives of the insurance industry and policyholders, and other organizations and experts, as appropriate.

''(n) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

''(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

''(2) INSURER.—The term 'insurer' means any person engaged in the business of insurance, including reinsurance.

''(3) COVERED AGREEMENTS.—The term 'Covered Agreements' means a written bilateral or multilateral agreement entered into between the United States and a foreign government, authority, or regulatory entity after the date of the enactment of the Restoring American Financial Stability Act of 2010 regarding prudential measures applicable to the business of insurance or reinsurance that—

''(A) provides for recognition of other countries' prudential measures with respect to the business of insurance or reinsurance;

''(B) protects insurance consumers in the United States;

''(C) promotes the integrity and stability of the financial system; and

''(D) meets the regulatory goals of the States with respect to the comparable subject matter.

''(4) NON-UNITED STATES INSURER.—The term 'non-United States insurer' means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

''(5) OFFICE.—The term 'Office' means the Office of National Insurance established by this section.

''(6) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

''(7) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

''(8) UNITED STATES INSURER.—The term 'United States insurer' means—

''(A) an insurer that is organized under the laws of a State; or

''(B) a United States branch of a non-United States insurer.

''(o) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.

''SEC. 314. COVERED AGREEMENTS.

''(a) IN GENERAL.—The Secretary of the Treasury is authorized to negotiate and enter into Covered Agreements on behalf of the United States.

''(b) SAVINGS PROVISION.—Nothing in this section or section 313 shall be construed to affect the development and coordination of United States international trade policy or the administration of the United States trade agreements program. It is to be understood that the negotiation of Covered Agreements under such sections is consistent with the requirement of this subsection.

''(c) REQUIREMENTS FOR CONSULTATION.—

''(1) IN GENERAL.—Before initiating negotiations to enter into a Covered Agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary shall consult with the United States Trade Representative, the relevant Congressional committees, and the insurance commissioners of the States and territories of the United States.

''(2) APPLICATION OF APA.—The initiation of negotiations to enter into a Covered Agreement under subsection (a) and the decision to enter into any such Covered Agreement shall be subject to notice and comment rulemaking under the Administrative Procedures Act.

''(d) ENTRY INTO FORCE.—A Covered Agreement under subsection (a) may enter into force with respect to the United States only if—

''(1) the Secretary has made available for public review by posting in the Federal Register a copy of the final legal text of the Covered Agreement; and

''(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the Covered Agreement is made available for public review under paragraph (1) has expired.''.

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking ''; and'' and inserting a semicolon;

(2) in paragraph (8)(C), by striking the period at the end and inserting ''; and''; and

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

''(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.''.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

''Sec. 312. Terrorism and financial intelligence.
''Sec. 313. Office of National Insurance.
''Sec. 314. Covered Agreements.
''Sec. 315. Continuing in office.''.

SA 3923. Mr. SCHUMER (for himself, Mr. REED, Mr. AKAKA, 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 1248, strike line 22 and all that follows through page 1249, line 10 and insert the following:

(1) COVERED PERSONS.—This section shall apply to any covered person who is not a person described in section 1025(a) or 1026(a).

On page 1255, line 5, strike ''(A) IN GENERAL.—The Bureau'' and insert the following:

''(A) NOTICE.—If the Federal Trade Commission is authorized to enforce any Federal consumer financial law described in paragraph (1), either the Bureau or the Federal Trade Commission shall serve written notice to the other of the intent to take any enforcement action, prior to initiating such an enforcement action, except that if the Bureau or the Federal Trade Commission, in filing the action, determines that prior notice is not feasible, the Bureau or the Federal Trade Commission may provide notice immediately upon initiating such enforcement action.

''(B) COORDINATION.—The Bureau''.

On page 1255, line 10, strike ''(1)(A)''.

On page 1255, line 19, strike ''(B)'' and insert ''(C)''.

On page 1256, line 15, strike ''(C)'' and insert ''(D)''.

On page 1256, line 19, strike ''(D)'' and insert ''(E)''.

On page 1255, line 10, strike ''(1)(A)''.

SA 3924. 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 1522, line 6, strike ''date.'' and insert the following: ''date.

SEC. 1105. FHA MORTGAGE INSURANCE PROGRAMS.

(a) FHA MORTGAGE AMOUNT LIMITS FOR ELEVATOR-TYPE STRUCTURES.—

(1) AMENDMENTS.—Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended—

(A) in section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A))—

(i) by inserting ''with sound standards of construction and design'' after ''elevator-type structures''; and

(ii) by striking ''to not to exceed'' and all that follows through the semicolon at the end and inserting ''by not more than 50 percent of the amounts specified in this subparagraph for each unit size;'';

(B) in section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A))—

(i) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(ii) by striking ''to not to exceed'' and all that follows through ''; (B)(i)'' and inserting ''by not more than 50 percent of the amounts specified in this subparagraph for each applicable family unit size; (B)(i)'';

(C) in section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I))—

(i) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(ii) by striking ''family unit not to exceed'' and all that follows through ''design; and'' and inserting ''family unit by not more than 50 percent of the amounts specified in this subclause for each applicable family unit size; and'';

(D) in section 221(d) (12 U.S.C. 1715l(d))—

(i) in paragraph (3)(ii)(I)—

(I) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(II) by striking ''to not to exceed'' and all that follows through ''design;'' and inserting ''by not more than 50 percent of the amounts specified in this subclause for each applicable family unit size;''; and

(ii) in paragraph (4)(ii)(I)—

(I) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(II) by striking ''to not to exceed'' and all that follows through ''design;'' and inserting ''by not more than 50 percent of the amounts specified in this subclause for each applicable family unit size;'';

(E) in section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A))—

(i) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(ii) by striking ''to not to exceed'' and all that follows through ''design;'' and inserting ''by not more than 50 percent of the amounts specified in this subparagraph for each applicable family unit size;''; and

(F) in section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A))—

(i) by inserting ''with sound standards of construction and design'' after ''consist of elevator-type structures''; and

(ii) by striking ''to not to exceed'' and all that follows through ''sound standards of construction and design;'' and inserting ''by not more than 50 percent of the amounts specified in this subparagraph for each applicable family unit size;''.

(b) FHA MORTGAGE AMOUNT LIMITS FOR EXTREMELY HIGH-COST AREAS.—Section 214 of the National Housing Act (12 U.S.C. 1715d) is amended—

(1) in the first sentence—

(A) by inserting ''or with respect to projects consisting of more than four dwelling units located in an extremely high-cost area, as determined by the Secretary'' after ''or the Virgin Islands,'';

(B) by striking ''or the Virgin Islands without sacrifice'' and inserting ''or the Virgin Islands, or to construct projects consisting of more than four dwelling units on property located in an extremely high-cost area, as determined by the Secretary, without sacrifice''; and

(C) by striking ''or the Virgin Islands in such'' and inserting ''or the Virgin Islands, or with respect to projects consisting of more than four dwelling units located in an extremely high-cost area, as determined by the Secretary, in such'';

(2) in the second sentence—

(A) by striking ''the Virgin Islands shall'' and inserting ''the Virgin Islands, or with respect to a project consisting of more than four dwelling units located in an extremely high-cost area, as determined by the Secretary, shall''; and

(B) by striking ''Virgin Islands:'' and inserting ''Virgin Islands, or in the case of a project consisting of more than four dwelling units in an extremely high-cost area as determined by the Secretary, in such extremely high-cost area:''; and

(3) in the section heading, by striking ''AND THE VIRGIN ISLANDS'' and inserting ''THE VIRGIN ISLANDS, AND EXTREMELY HIGH-COST AREAS''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to mortgages insured under title II of the National Housing Act on and after the date of enactment of this Act.

SA 3925. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1004, strike line 15 and all that follows through page 1044, line 2, and insert the following:

SEC. 931. REMOVAL OF REFERENCES TO CREDIT RATINGS IN FEDERAL LAW.

(a) COVERED FEDERAL AGENCY.—In this section, the term ''covered Federal agency'' means—

(1) the Commission;

(2) the Corporation;

(3) the Board of Governors;

(4) the National Credit Union Administration;

(5) the Federal Housing Finance Agency; and

(6) the Office of the Comptroller of the Currency.

(b) REVIEW BY COVERED FEDERAL AGENCIES.—Not later than 2 years after the date of enactment of this Act, each covered Federal agency shall—

(1) review all statutes, rules, regulations, forms, and interpretive guidance administered or issued by the covered Federal agency to identify references to the term ''nationally recognized statistical rating organization'';

(2) amend the rules, regulations, forms, and interpretive guidance that the covered Federal agency has identified under paragraph (1) to ensure that the rules, regulations, forms, and interpretive guidance neither require nor promote reliance by persons regulated by the covered Federal agency on credit ratings issued by a nationally recognized statistical rating organization; and

(3) 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 contains recommendations for amendments to any statute that the covered Federal agency has identified under paragraph (1) to ensure that the statute neither requires nor promotes reliance on credit ratings issued by a nationally recognized statistical rating organization.

(c) REVIEW BY COMPTROLLER GENERAL.—

(1) REVIEW REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall—

(A) review all statutes, rules, regulations, forms, and interpretive guidance administered or issued by each Federal agency that is not a covered Federal agency to identify references to the term ''nationally recognized statistical rating organization'';

(B) recommend to each Federal agency that is not a covered Federal agency, and for which the Comptroller General has identified rules, regulations, forms, and interpretive guidance under subparagraph (A), amendments to the relevant rules, regulations, forms, and interpretive guidance to ensure that the rules, regulations, forms, and interpretive guidance neither require nor promote reliance by persons regulated by the Federal agency on credit ratings issued by a nationally recognized statistical rating organization; and

(C) submit to Congress a report that contains recommendations for amendments to any statute that the Comptroller General has identified under subparagraph (A) to ensure that the statute neither requires nor promotes reliance on credit ratings issued by a nationally recognized statistical rating organization.

(2) AMENDMENTS.—Not later than 2 years after the date of enactment of this Act, any Federal agency to which the Comptroller General has made a recommendation under paragraph (1)(B) shall amend any rules, regulations, forms, or interpretive guidance identified by the Comptroller General to ensure that the rules, regulations, forms, or interpretive guidance neither require nor promote reliance by persons regulated by the Federal agency on credit ratings issued by a nationally recognized credit rating organization.

SA 3926. Ms. STABENOW (for herself, Mr. BENNETT, Mr. HATCH, 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 431, strike lines 14 through 20 and insert the following:

(ii) results from—

(I) the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency;

(II) an acquisition of voting shares in a publicly traded holding company of a industrial bank if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert)—

(aa) holds less than 25 percent of the voting shares of the company; and

(bb) has obtained all regulatory approvals required for such change of control under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and any applicable State law; or

(III) an internal reorganization of affiliated entities in which the ownership of the industrial bank, credit card bank, or trust bank is transferred from one affiliate to another after receiving all regulatory approvals required for such change of control under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and any applicable State law.

SA 3927. Mr. LEAHY 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 749, line 17 strike all through page 752, line 11, and insert the following:

''(2) PROHIBITION OF DISCLOSURE OF IDENTITY.—

''(A) IN GENERAL.—Except as provided in paragraph (B) of this subsection, or with the written consent of the whistleblower, the Commission may not disclose the name, identity or identifying information about the whistleblower who has provided information to the Commission.

''(B) NOTICE AND APPLICABILITY TO OTHER GOVERNMENT AGENCIES AND FOREIGN AUTHORITIES.—Whenever the Commission makes a disclosure to other agencies and foreign authorities, it shall provide reasonable advance notice to the whistleblower if disclosure of that person's identity or identifying information is to occur. Any entity that receives such as disclosure shall protect the whistleblower's confidentiality in accordance with this subsection.

On page 990, line 7, strike all through page 993, line 7, and insert the following:

''(2) PROHIBITION OF DISCLOSURE OF IDENTITY.—

''(A) IN GENERAL.—Except as provided in paragraph (B), or with the written consent of the whistleblower, the Commission may not disclose the name, identity or identifying information about the whistleblower who has provided information to the Commission.

''(B) NOTICE AND APPLICABILITY TO OTHER GOVERNMENT AGENCIES AND FOREIGN AUTHORITIES.—Whenever the Commission makes a disclosure to other agencies and foreign authorities, it shall provide reasonable advance notice to the whistleblower if disclosure of that person's identity or identifying information is to occur. Any entity that receives such as disclosure shall protect the whistleblower's confidentiality in accordance with this subsection.

SA 3928. Mr. BENNET (for himself, Mr. TESTER Mr. ISAKSON, Ms. KLOBUCHAR, Mr. BEGICH, Mr. UDALL of Colorado, and Mr. LEMIEUX) 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 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).''.

SA 3929. 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 1223, line 8, strike Sec. 1017, and insert the following:

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) OVERALL OPERATING BUDGET.—

(1) IN GENERAL.—Eighteen months after the designated transfer date, and annually thereafter, the Director shall prepare an operating budget for the Bureau. The Director shall submit the budget to the Board of Governors for approval.

(2) BUDGET ITEMIZATION REQUIRED.—The Director shall include in each budget submitted pursuant to paragraph (1) an itemization of the amount of funds necessary to carry out the functions of the Bureau, including any expenditures necessary to address recommendations or findings of material deficiencies by the Comptroller General of the United States.

(b) FEES AND ASSESSMENTS.—

(1) IN GENERAL.—The Bureau shall establish, by rule, assessment schedules, including the assessment base and rates, applicable to nondepository covered persons described in section 1024(a).

(2) NONDEPOSITORY COVERED PERSONS.—The assessments imposed by the Bureau by rules established pursuant to paragraph (1) shall, with respect to covered persons described in section 1024(a), be set to recover the costs of the Bureau in carrying out its supervisory and enforcement responsibilities described in section 1024.

(3) TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—To the extent that assessments do not provide funding sufficient to meet the amount subject to the limitation in paragraph (4), funds shall be transferred from the Board of Governors.

(4) LIMITATION.—The assessments imposed by the Bureau by rules established pursuant to paragraph (1) and any funds transferred from the Board of Governors collectively shall not exceed 5 percent of the total operating expenses of the Federal Reserve System, as reported in the Annual Report of the Board of Governors for fiscal year 2006.

(c) FUND ESTABLISHED.—

(1) IN GENERAL.—The Secretary shall establish in the Treasury of the United States, a separate account, to be known as the ''Consumer Financial Protection Fund'' (referred to in this title as the ''CFP Fund''). Fees and assessments collected under this section shall be deposited into the CFP Fund.

(2) RULE OF CONSTRUCTION.—Any amounts deposited into the CFP Fund may not be construed to be Government funds or appropriated monies.

(3) NO APPORTIONMENT.—Any amounts deposited into the CFP Fund shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(4) AVAILABILITY.—Funds in the CFP Fund shall be immediately available to the Bureau and under the control of the Bureau, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities.

(d) FINANCIAL, OPERATING PLANS AND FORECASTS.—

(1) OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

(2) FINANCIAL STATEMENTS.—The Bureau shall prepare annually a statement of—

(A) assets and liabilities and surplus or deficit;

(B) income and expenses; and

(C) sources and application of funds.

(3) FINANCIAL MANAGEMENT SYSTEMS.—The Bureau shall implement and maintain financial management systems that comply with Federal financial management systems requirements and applicable Federal accounting standards.

(4) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established under section 3512(c) of title 31, United States Code.

(5) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in this subsection or any jurisdiction or oversight over the affairs or operations of the Bureau.

(e) AUDIT OF THE BUREAU.—

(1) IN GENERAL.—The Comptroller General of the United States shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of the Comptroller General to access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

(2) REPORT.—

(A) REPORT ON ANNUAL AUDIT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection, which report shall—

(i) set forth the scope of the audit;

(ii) include the statement of—

(I) assets and liabilities and surplus or deficit;

(II) income and expenses; and

(III) sources and application of funds;

(iii) include any detailed findings of material deficiencies;

(iv) include such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau; and

(v) be presented, together with recommendations with respect thereto, as the Comptroller General may deem necessary and advisable to improve the business practices of the Bureau or correct any material deficiencies.

(B) COPIES.—A copy of each report submitted under subparagraph (A) shall be furnished to the President and to the Bureau at the time such report is submitted to Congress.

(C) FOLLOW-UP REPORT.—The Bureau shall submit to Congress a report following each annual audit conducted under this subsection that includes a detailed explanation of any recommendations or findings of material deficiencies, together with a corrective action plan, including a timeline, for addressing the findings and recommendations of the Comptroller General.

(3) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General under this subsection. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(f) TRANSITION.—Until such time as an assessment schedule has been established pursuant to this section and the necessary contributions have been deposited into the CFP Fund, the functions assigned under this section to the Bureau shall be funded in accordance with section 1066(c).

(g) LIMITATION ON DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—None of the funds made available under this title shall be used for or to support private litigation or to fund political activities, nor be provided to any—

(A) organization which has been indicted for a violation under Federal law relating to an election for Federal office; and

(B) organization which employs any applicable individual.

(2) APPLICABLE INDIVIDUALS DEFINED.—In this subsection, the term ''applicable individual'' means an individual who—

(A) is—

(i) employed by the organization in a permanent or temporary capacity;

(ii) contracted or retained by the organization; or

(iii) acting on behalf of, or with the express or apparent authority of, the organization; and

(B) has been indicted for a violation under Federal law relating to an election for Federal office.

(h) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (i).

(i) REPORTS REQUIRED.—The Director shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services.

On page 1210, strike line 1 and all that follows through page 1211, line 19.

SA 3930. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, between lines 4 and 5, insert the following:

(s) NO AUTHORITY OVER UNDERWRITING STANDARDS FOR RESIDENTIAL MORTGAGE LOANS.—

(1) RULE OF CONSTRUCTION.—Nothing in this title may be construed as conferring authority on the Bureau to exercise any rulemaking or other authority for matters pertaining to underwriting standards with respect to residential mortgage loans, except as otherwise authorized under section 1024.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term 'residential mortgage loan' means any extension of credit primarily for

personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) the terms ''credit'' and ''dwelling'' have the same meanings as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

On page 1430, strike line 8 and all that follows through page 1440, line 21.

SA 3931. Mr. MERKLEY (for himself, Mr. LEVIN, Mr. BROWN of Ohio, Mr. KAUFMAN, Mrs. SHAHEEN, Mrs. FEINSTEIN, Mr. CASEY, Mr. NELSON of Florida, Mr. BURRIS, Mr. BEGICH, Mr. INOUYE, Mr. WHITEHOUSE, Mrs. MCCASKILL, Mr. UDALL of Colorado, Ms. MIKULSKI, Mr. SANDERS, Mr. UDALL of New Mexico, and 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 484, strike line 16 and all that follows through page 497, line 8, and insert the following:

SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—

''(A) IN GENERAL.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section.

''(B) CONTENTS OF STUDY.—Not later than 6 months after the date of enactment of this Act, the Council shall study and make recommendations on implementing the provisions of this section so as to—

''(i) promote and enhance the safety and soundness of banking entities;

''(ii) protect taxpayers and enhance financial stability by minimizing the risk that depository institutions and the affiliates of depository institutions will engage in unsafe and unsound activities;

''(iii) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(iv) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies, and the interests of the customers of such entities and companies;

''(v) not unreasonably raise the cost of credit or other financial services, reduce the availability of credit or other financial services, or impose other costs on households and businesses in the United States;

''(vi) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies; and

''(vii) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of an affiliated insured depository institution and the United States financial system.

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section.

''(B) COORDINATED RULEMAKING.—

''(i) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the agencies shall consult and coordinate with each other for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board.

''(ii) COUNCIL ROLE.—The chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—The provisions of this section shall take effect 18 months after the date of adoption of final rules under subsection (b)(2), but not later than 3 years after the date of enactment of this section.

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by other laws or regulations, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, may jointly determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et. seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (i)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce risks to the banking entity or nonbank financial company.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (i)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (i)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company provided such activities are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the company or the banking entity or the financial stability of the United States.

''(G) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the company is not directly or indirectly controlled by a United States person.

''(H) The acquisition or retention of any equity, partnership, or other ownership interest in or the sponsorship of a hedge fund or a private equity fund by a company pursuant to section 4(c) (9) or (13) solely outside of the United States, provided that no ownership interest in the hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the company is not directly or indirectly controlled by a company that is organized in the United States.

''(I) Such other activity as the appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, jointly determine through regulation, as provided for in subsection (c), would promote and protect the safety and soundness of the banking entity or nonbank

financial company and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall issue regulations to implement subparagraph (A) as part of the regulations provided for under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall adopt rules imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall jointly issue regulations as part of the rulemaking provided for in subsection (c) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Notwithstanding any other provision of law, whenever an appropriate Federal banking agency or the Securities and Exchange Commission or Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that is intended to evade the requirements of this section (including through an abuse of any permitted activity), the appropriate Federal banking agency or the Securities and Exchange Commission or Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company to terminate the activity and, as relevant, dispose of the investment; provided that nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or state regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(g) LIMITATION ON CONTRARY AUTHORITY.—No activity that is authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law may be engaged in, directly or indirectly, by a banking entity or a nonbank financial company supervised by the Board under such authority or under any other provision of law, if such activity is prohibited or restricted under this section.

''(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit the inherent authority of any Federal agency or state regulatory authority under otherwise applicable provisions of law.

''(i) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity.

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY.—The terms 'nonbank financial company supervised by the Board' and 'nonbank financial company' mean any United States nonbank financial company or foreign nonbank financial company supervised by the Board under section 113 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, contract of sale of a commodity for future delivery, any option on any such contract, swap, security-based swap, or any other security or financial instrument that the appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, may jointly, by rule, determine.

''(5) TRADING ACCOUNT.—For all banking entities and nonbank financial companies covered by this section, the term 'trading account' shall be defined consistent with guidance issued by the Board with regard to financial statements of bank holding companies and shall include any account used for acquiring or taking positions in such items principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, may jointly, by rule, determine.

''(6) SPONSOR.—The term to 'sponsor' a fund means to—

''(A) serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner select or control (or having employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.''.

SEC. 619A. STUDY OF BANK ACTIVITIES.

(a) STUDY.—Not later than 18 months after the date of enactment of this Act, the appropriate Federal banking agencies shall jointly review and prepare a report on activities permitted as part of the business of banking under Federal and State law including activities authorized by statute and by order, interpretation and guidance and shall as part of the report review and consider—

(1) the type of activities or investment;

(2) any financial, operational, managerial or reputation risks associated with or presented as a result of the banking entity engaged in the activity or making the investment; and,

(3) risk mitigation activities undertaken by the banking entity with regard to the risks.

(b) REPORT AND RECOMMENDATIONS TO THE COUNCIL AND TO CONGRESS.—The appropriate Federal banking agencies shall submit to the Council, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate the study conducted pursuant to subsection (a) no later than two months after its completion. In addition to the information described in subsection (a), the report shall include recommendations regarding—

(1) whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the United States financial system;

(2) the appropriateness of the conduct of each activity or type of investment by banking entities; and,

(3) additional restrictions as may be necessary to address risks to safety and soundness.

SEC. 619B. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, The Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities necessary to conduct the underwriting, placement, initial purchase, or sponsorship, provided that this subparagraph shall not otherwise limit the application of section 15(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).''.

SA 3932. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

''SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

''(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

''(1) REGULATORY AUTHORITY.—The Board shall have authority to establish rules, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction.

''(2) REASONABLE FEES.—The amount of any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction shall be reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(3) RULEMAKING REQUIRED.—The Board shall issue final rules, not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(4) CONSIDERATIONS.—In issuing rules required by this section, the Board shall—

''(A) consider the functional similarity between—

''(i) electronic debit transactions; and

''(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

''(B) distinguish between—

''(i) the actual incremental cost incurred by an issuer or payment card network for the role of the issuer or the payment card network in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

''(ii) other costs incurred by an issuer or payment card network which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

''(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

''(5) EXEMPTION FOR SMALL ISSUERS.—This subsection shall not apply to issuers that, together with affiliates, have assets of less than $1,000,000,000, and the Board shall exempt such issuers from rules issued under paragraph (3).

''(6) EFFECTIVE DATE.—Paragraph (2) shall become effective 12 months after the date of enactment of the Consumer Financial Protection Act of 2010.

''(b) LIMITATION ON ANTI-COMPETITIVE PAYMENT CARD NETWORK RESTRICTIONS.—

''(1) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A COMPETING PAYMENT CARD NETWORK.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment through the use of a card or device of another payment card network.

''(2) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, check, debit card, or credit card.

''(3) NO RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to set a minimum or maximum dollar value for the acceptance by that person of any form of payment.

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

''(1) DEBIT CARD.—The term 'debit card'—

''(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means;

''(B) includes general use prepaid cards, as that term is defined in section 915(a)(2)(A) (15 U.S.C. 1693l–1(a)(2)(A)); and

''(C) does not include paper checks.

''(2) CREDIT CARD.—The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(3) DISCOUNT.—The term 'discount'—

''(A) means a reduction made from the price that customers are informed is the regular price; and

''(B) does not include any means of increasing the price that customers are informed is the regular price.

''(4) ELECTRONIC DEBIT TRANSACTION.—The term 'electronic debit transaction' means a transaction in which a person uses a debit card to debit an asset account.

''(5) INTERCHANGE TRANSACTION FEE.—The term 'interchange transaction fee' means any fee established by a payment card network that has been established for the purpose of compensating an issuer or payment card network for its involvement in an electronic debit transaction.

''(6) ISSUER.—The term 'issuer' means any person who issues a debit card, or the agent of such person with respect to such card.

''(7) PAYMENT CARD NETWORK.—The term 'payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.''.

SA 3933. 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 1291, line 15 strike '', **DECEPTIVE, OR ABUSIVE**'' and insert ''**OR DECEPTIVE**''.

On page 1291, line 20, strike '', deceptive, or abusive'' and insert ''or deceptive''.

On page 1292, line 1, strike '', deceptive, or abusive'' and insert ''or deceptive''.

On page 1293, strike lines 3 through 20.

On page 1293, line 21, strike ''(e)'' and insert ''(d)''.

SA 3934. Mr. SCHUMER (for himself and Mrs. GILLIBRAND) 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 567, lines 7 and 8, strike '', subject to the requirements of section 5(b)''.

On page 727, after line 25, insert the following:

(C) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a derivatives clearing organization shall submit to the Commission for prior approval each proposed new rule, or amendment or interpretation of an existing rule, that materially changes the terms and conditions, as determined by the Commission, of—

(i) admission and continuing eligibility standards for members of and participants in the derivatives clearing organization, including the financial resources required for a member of a derivatives clearing organization;

(ii) management of the risks associated with discharging the responsibilities of a derivatives clearing organization; and

(iii) management of events when members or participants become insolvent or otherwise default on their obligations to a derivatives clearing organization.

On page 728, line 1, strike ''(C)'' and insert ''(D)''.

On page 783, lines 5 and 6, strike '', subject to the requirements of section 5(b)''.

On page 881, between lines 6 and 7, insert the following:

(c) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this title or of the Securities Exchange Act of 1934, and for purposes of clarification, each proposed new rule, or amendment or interpretation of an existing rule, of a registered clearing agency, as that term is defined in section 3(a)(23) of the Securities Exchange Act of 1934, shall be filed with the Securities and Exchange Commission for approval in accordance with section 19(b) of such Act, and

shall not become effective unless such approval is obtained, to the extent such proposal, amendment, or interpretation would change, in a manner not provided for under section 19(b)(3)(A) of such Act, as determined by the Commission, the terms and conditions of—

(1) admission and continuing eligibility standards for members of and participants in a registered clearing agency, including the financial obligations of a member of a registered clearing agency;

(2) management of the risks associated with the discharge of the responsibilities of a registered clearing agency; or

(3) management of events when members or participants become insolvent or otherwise default on their obligations to a registered clearing agency.

SA 3935. Mrs. GILLIBRAND 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 632, between lines 4 and 5, insert the following:

''(e) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements set forth in subsection (c)(7) and subsection (d)(2) shall only apply to entities from jurisdictions in which a swap data repository is located and only if the Commission determines that such swap data repository does not make all data obtained by such swap data repository available on terms and conditions comparable to those on which a swap data repository registered with the Commission makes data available.''.

On page 632, line 5, strike ''(e)'' and insert ''(f)''.

On page 632, line 16, strike ''(f)'' and insert ''(g)''.

On page 633, line 17, strike ''(f)'' and insert ''(g)''.

On page 634, line 18, strike ''(g)'' and insert ''(h)''.

On page 634, line 24, strike ''(h)'' and insert ''(i)''.

On page 844, between lines 2 and 3, insert the following:

''(6) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements set forth in subparagraph (G) and subparagraph (H)(ii) shall only apply to entities from jurisdictions in which a security-based swap data repository is located and only if the Commission determines that such security-based swap data repository does not make all data obtained by such security-based swap data repository available on terms and conditions comparable to those on which a security-based swap data repository registered with the Commission makes data available.''.

On page 844, line 3, strike ''(6)'' and insert ''(7)''.

On page 844, line 18, strike ''(7)'' and insert ''(8)''.

On page 847, line 1, strike ''(7)'' and insert ''(8)''.

On page 848, line 6, strike ''(8)'' and insert ''(9)''.

On page 848, line 13, strike ''(9)'' and insert ''(10)''.

SA 3936. Mrs. GILLIBRAND 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 541, strike line 24 and insert the following:

as a major swap participant.

''(E) CONSULTATION; COORDINATION.—In making a determination under subparagraph (B), the Commission shall consult with the members of the Council, and shall seek to establish standards consistent with standards established by the Securities and Exchange Commission, in determining substantial positions for security-based major swap participants.''.

On page 767, between lines 10 and 11, insert the following:

''(E) CONSULTATION; COORDINATION.—In making a determination under subparagraph (B), the Commission shall consult with the members of the Council, and shall seek to establish standards consistent with standards established by the Commodity Futures Trading Commission, in determining substantial positions for major swap participants.

SA 3937. Mrs. LANDRIEU (for herself, Mr. CHAMBLISS, and Mr. ISAKSON) 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 1273, line 6, insert ''significantly'' after ''extended''.

NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. DORGAN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, May 13, 2010, at 9:30 a.m. in room 628 of the Dirksen Senate Office Building to conduct an oversight hearing entitled ''Does Indian School Safety Get a Passing Grade?''

Those wishing additional information may contact the Indian Affairs Committee at (202) 224–2251.

DISCHARGE AND REFERRAL—S.J. RES. 29

Mr. DODD. Madam President, I ask unanimous consent that S.J. Res. 29 be discharged from the Committee on Foreign Relations and be referred to the Committee on Finance.

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

HONORING THE 100TH ANNIVERSARY OF THE ESTABLISHMENT OF GLACIER NATIONAL PARK

Mr. DODD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 520, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 520) honoring the 100th anniversary of the establishment of Glacier National Park.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Madam 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, all without intervening action or debate, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 520) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 520

Whereas Glacier National Park was established as the 10th National Park on May 11, 1910;

Whereas Glacier National Park is part of the Waterton-Glacier International Peace Park, the world's first international peace park;

Whereas Glacier National Park has a total of 25 named glaciers;

Whereas water originating in the park is considered the headwaters of three major drainages;

Whereas Glacier National Park is the core of the ''Crown of the Continent Ecosystem'', one of the country's largest intact ecosystems;

Whereas Glacier National Park encompasses over 1,000,000 acres, 762 lakes, more than 60 native species of mammals, 277 species of birds, and almost 2,000 plant species;

Whereas Glacier National Park's lands hold great spiritual importance to the Blackfeet and the Salish and Kootenai native peoples;

Whereas the Park contains 110 miles of the Continental Divide Trail;

Whereas the Going-to-the-Sun Road in Glacier National Park was completed in 1932 and is a National Historic Civil Engineering Landmark;

Whereas in 1976 Glacier was dedicated a Biosphere Reserve by UNESCO;

Whereas in 1995 Waterton-Glacier International Peace Park was designated a World Heritage Site; and

Whereas Glacier National Park receives approximately 2,000,000 visitors a year: Now, therefore, be it

Resolved, That the people of the United States should observe and celebrate the 100th anniversary of the establishment of Glacier National Park in Montana on May 11, 2010.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 94–

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. 771(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.

a manner that supports, maintains, and defends the Constitution of the United States and the Constitution of the State of Washington;

Whereas law enforcement officers throughout the Nation and in Washington State risk their own lives to protect the lives of others;

Whereas, since 1791, 20,146 law enforcement officers were killed in the line of duty in the United States and 270 of these officers served the people of Washington State;

Whereas, in 2009, 126 law enforcement officers were killed in the line of duty in the United States;

Whereas, in 2009, Deputy Sheriff Stephen Michael Gallagher, Jr., of the Lewis County Sheriff's Office, Officer Timothy Q. Brenton of the Seattle Police Department, Officer Tina G. Griswold of the Lakewood Police Department, Officer Ronald Wilbur Owens II of the Lakewood Police Department, Sergeant Mark Joseph Renninger of the Lakewood Police Department, Officer Gregory James Richards of the Lakewood Police Department, and Deputy Sheriff Walter Kent Mundell, Jr., of the Pierce County Sheriff's Department gave their lives in the service of the people of Washington State;

Whereas the family members and friends of Deputy Sheriff Stephen Michael Gallagher, Jr., Officer Timothy Q. Brenton, Officer Tina G. Griswold, Officer Ronald Wilbur Owens II, Sergeant Mark Joseph Renninger, Officer Gregory James Richards, and Deputy Sheriff Walter Kent Mundell, Jr., bear the most immediate and profound burden of the absence of their loved ones; and

Whereas National Police Week is observed during the week of May 9, 2010, to May 15, 2010, and is the most appropriate time to honor the Washington State law enforcement officers who sacrificed their lives in service to their State and Nation: Now, therefore, be it

Resolved, That the Senate—

(1) extends its condolences to the families and loved ones of Deputy Sheriff Stephen Michael Gallagher, Jr., Officer Timothy Q. Brenton, Officer Tina G. Griswold, Officer Ronald Wilbur Owens II, Sergeant Mark Joseph Renninger, Officer Gregory James Richards, and Deputy Sheriff Walter Kent Mundell, Jr.; and

(2) stands in solidarity with the people of Washington State as they celebrate the lives and mourn the loss of these remarkable and selfless heroes who represented the best of their community and whose memory will serve as an inspiration for future generations.

SENATE RESOLUTION 522—RECOGNIZING NATIONAL NURSES WEEK

Mr. BURRIS (for himself, Ms. SNOWE, Ms. MIKULSKI, Mr. MERKLEY, Mr. DURBIN, and Mr. JOHANNS) submitted the following resolution; which was considered and agreed to:

S. RES. 522

Whereas since 1990, National Nurses Week is celebrated annually from May 6, which is known as National Recognition Day for Nurses, through May 12, which is the birthday of Florence Nightingale, the founder of modern nursing;

Whereas National Nurses Week is a time of year to reflect on the important contributions that nurses make to provide safe, high-quality health care;

Whereas nurses are known to be patient advocates, acting fearlessly to protect the lives of those under their care;

Whereas nurses represent the largest single component of the health care profession with 3,100,000 jobs;

Whereas nurses are experienced researchers, and their work encompasses a wide scope of scientific inquiry, including clinical research, health systems and outcomes research, and nursing education research;

Whereas nurses are well positioned to provide leadership to eliminate health care disparities that exist in the United States;

Whereas nurses help inform and educate the public to improve the practice of all nurses and, more importantly, the health and safety of the patients they care for;

Whereas survey data shows that enrollments in entry-level baccalaureate programs in nursing rose by 3.6 percent in 2009, and though this marks the ninth consecutive year of enrollment growth, the annual increase in student capacity in 4-year nursing programs has declined sharply since 2003 when enrollment was up by 16.6 percent;

Whereas nursing programs in the United States were forced to reject almost 119,000 qualified applicants according to the most recent survey of all prelicensure nursing programs;

Whereas according to the Bureau of Labor and Statistics, employment of registered nurses is expected to grow by 22 percent from 2008 to 2018, which is a much faster rate of growth than the average rate of growth for all occupations;

Whereas according to survey data, enrollment in doctoral nursing programs increased by more than 20 percent this year, signaling strong interest among students in careers as nursing scientists, faculty, primary care providers, and specialists;

Whereas expanding capacity in baccalaureate and graduate programs is critical to sustaining a healthy nursing workforce and providing patients with the best care possible;

Whereas the nationwide nursing shortage has caused dedicated nurses to work longer hours and care for more acutely ill patients;

Whereas nurse educators work on average more than 57 hours per week in order to ensure that each and every new registered nurse receives an excellent education, advancing excellence among the next generation of nurses;

Whereas nurses inform legislators on the education, retention, recruitment, and practice of all nurses and, more importantly, the health and safety of the patients they care for; and

Whereas increased Federal and State support is needed to enhance existing programs and create new programs to educate nursing students at all levels, to increase the number of faculty members to educate nursing students, to create clinical sites and have appropriately prepared nurses teach and train at those sites, to create educational opportunities to retain nurses in the profession, and to educate and train more nurse research scientists who can discover new nursing: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes National Nurses Week;

(2) supports the goals and ideals of National Nurses Week;

(3) acknowledges the importance of quality higher education in nursing, including baccalaureate and graduate programs, to meet the needs of one of the fastest growing labor fields in the Nation; and

(4) supports the nurse capacity initiatives for institutions of higher education included in the Higher Education Opportunity Act.

SENATE RESOLUTION 523—HONORING THE CREW MEMBERS WHO PERISHED ABOARD THE OFFSHORE OIL RIG, DEEPWATER HORIZON, AND EXTENDING THE CONDOLENCES OF THE SENATE TO THE FAMILIES AND LOVED ONES OF THE DECEASED CREW MEMBERS

Ms. LANDRIEU (for herself, Mr. WICKER, Mr. SHELBY, Mr. VITTER, Mrs. HUTCHISON, Mr. COCHRAN, Mr. CORNYN, Mr. SESSIONS, Mr. BINGAMAN, Ms. MURKOWSKI, and Mr. NELSON of Florida) submitted the following resolution; which was considered and agreed to:

S. RES. 523

Whereas oil and natural gas are necessary commodities for the United States;

Whereas a drill ship, the Deepwater Horizon, was drilling in 5,000 feet of water approximately 50 miles off the coast of Louisiana, in the Gulf of Mexico;

Whereas on April 20, 2010, a terrible explosion occurred aboard the Deepwater Horizon;

Whereas 126 men and women were on board the Deepwater Horizon at the time of the explosion;

Whereas 11 men remain missing, and are presumed dead;

Whereas 17 people were injured, 3 of them critically; and

Whereas the United States is greatly indebted to oil rig crewmen for the serious physical risks, difficult periods of separation from their families, and supremely challenging engineering tasks endured to produce much-needed energy for the Nation: Now, therefore, be it

Resolved, That the Senate—

(1) honors the crew members who perished aboard the offshore oil rig, Deepwater Horizon; and

(2) expresses sincere condolences to the families and loved ones of the deceased crew members.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3979. 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.

SA 3980. Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, and Mr. JOHNSON) 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 3981. Mr. CARDIN (for himself and Ms. MIKULSKI) 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 3982. Mr. WYDEN (for himself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3983. 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 3984. 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 3985. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3986. Mr. CORNYN (for himself and Mr. VITTER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3987. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3988. Mrs. GILLIBRAND 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 3989. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 3217, supra.

SA 3990. Mr. LIEBERMAN (for himself and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3991. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, Mrs. MURRAY, Mr. MERKLEY, Mr. BINGAMAN, Mr. LAUTENBERG, Mrs. SHAHEEN, Mr. CASEY, Mr. WICKER, Mr. SANDERS, Mr. JOHNSON, Mr. KAUFMAN, Mr. GRASSLEY, Mr. DURBIN, Mr. HARKIN, and Ms. KLOBUCHAR) 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 3992. Mr. CRAPO proposed an amendment to amendment SA 3956 proposed by Ms. LANDRIEU (for herself, Mr. ISAKSON, Mrs. HAGAN, Mr. WARNER, and Mr. MENENDEZ) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 3993. Ms. STABENOW (for herself 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 3994. Mr. SPECTER 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 3995. 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 3996. Mr. COBURN (for himself, Mrs. MCCASKILL, and Mr. MCCAIN) submitted an amendment intended to be proposed to amendment SA 3775 submitted by Mr. WYDEN (for himself and Mr. GRASSLEY) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3997. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, Mr. JOHNSON, Mr. WHITEHOUSE, Mr. LAUTENBERG, Mrs. BOXER, and Mr. MERKLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3998. Mr. BUNNING 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 3999. Mr. BUNNING 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 4000. Mr. KAUFMAN (for himself, Mr. GRASSLEY, and Mr. BROWN of Ohio) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4001. Ms. LANDRIEU (for herself and Mr. ISAKSON) 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 4002. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4003. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4004. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3979. 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 1552, beginning on line 16, strike ''the President'' and all that follows through ''Senate,'' on line 19 and insert the following: ''the Class B directors of the Federal Reserve Bank of New York shall be designated by the Board of Governors,''.

On page 1553, line 1, strike ''supervised by the Board'' and insert ''subject to enhanced supervision and prudential standards under section 115''.

SA 3980. Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, and Mr. JOHNSON) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1187, line 9, strike ''effective.'' insert the following: ''effective.

Subtitle K—Resource Extraction Issuers

SEC. 995. FINDINGS.

Congress finds the following:

(1) It is in the interest of the United States to promote good governance in the extractive industries sector. Transparency in revenue payments benefits oil, gas, and mining companies, because it improves the business climate in which such companies work, increases the reliability of commodity supplies upon which businesses and people in the United States rely, and promotes greater energy security.

(2) Companies in the extractive industries sector face unique tax and reputational risks, in the form of country-specific taxes and regulations. Exposure to these risks is heightened by the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments, which in turn creates unstable and high-cost operating environments for multinational companies. The effects of these risks are material to investors.

SEC. 996. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, an officer or employee of a foreign government, an agent of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which

pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE.—

''(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in the annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(C) INTERACTIVE DATA STANDARD.—

''(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(D) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(E) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) PUBLIC AVAILABILITY OF INFORMATION.—

''(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.''.

SEC. 997. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the President should work with foreign governments, including members of the Group of 8 and the Group of 20, to establish domestic requirements that companies under the jurisdiction of each government publicly disclose any payments made to a government relating to the commercial development of oil, natural gas, and minerals; and

(2) the President should commit the United States to become a Candidate Country of the Extractive Industries Transparency Initiative.

SA 3981. Mr. CARDIN (for himself and Ms. MIKULSKI) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, between lines 6 and 7, insert the following:

(3) INVESTMENT COMPANIES AND ADVISERS.—In the event that an investment company required to be registered under the Investment Company Act of 1940, or the registered investment adviser to such a company, is subject to supervision by the Board of Governors, the Council shall, in consultation with the Commission and in lieu of the prudential standards outlined in subsections (b) through (f), recommend to the Board of Governors such alternative enhanced regulatory requirements as are necessary to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress of the investment company or investment adviser. Such alternative requirements shall consider any structural or legal limits on the ability of the investment company or investment adviser to hold capital.

On page 91, between lines 23 and 24, insert the following:

(3) INVESTMENT COMPANIES AND ADVISERS.—In the case of an investment company required to be registered under the Investment Company Act of 1940, or the registered investment adviser to such a company, that is supervised by the Board of Governors, the Board of Governors shall meet its obligations under this section by adopting the alternative enhanced regulatory requirements recommended by the Council under section 115.

SA 3982. Mr. WYDEN (for himself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 122. DISCLOSURE OF CONFLICTS OF INTERESTS.

(a) RECOMMENDATION BY COUNCIL.—The Council shall issue recommendations to the primary financial regulatory agencies to require, as applicable, bank holding companies or nonbank financial companies under their respective jurisdictions to make appropriate disclosures to any purchaser or prospective purchaser of financial products from such companies, if such companies have a direct financial interest that is in material conflict with the interests of the purchaser or prospective purchaser.

(b) PROCEDURES AND IMPLEMENTATION.—The procedural and implementation provisions of subsection (b) and (c) of section 120 shall apply to recommendations of the Council under this section.

SA 3983. 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 1052, line 3, strike ''SEC. 942,'' and insert the following:

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 3984. 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 293, line 11, strike ''(r)'' and insert the following:

(r) ADDITIONAL LIMITATION.—Notwithstanding any other provision of this section, or any other provision of law, the Corporation, when acting as a receiver under this title, may not reject or repudiate a real property lease under which a covered financial company is a lessee unless—

(1) the lessor consents to such rejection or repudiation; or

(2) the Corporation agrees to pay damages to the lessee, as if the lease had been rejected under section 365 of title 11, United States Code.

(s)

SA 3985. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

SA 3986. Mr. CORNYN (for himself and Mr. VITTER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1565, after line 23, add the following:

TITLE XIII—MISCELLANEOUS

SEC. 1301. RESTRICTIONS ON USE OF FEDERAL FUNDS TO FINANCE BAILOUTS OF FOREIGN GOVERNMENTS.

The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end the following:

''SEC. 68. RESTRICTIONS ON USE OF FEDERAL FUNDS TO FINANCE BAILOUTS OF FOREIGN GOVERNMENTS.

''(a) IN GENERAL.—The President shall direct the United States Executive Director of the International Monetary Fund—

''(1) to evaluate any proposed loan to a country by the Fund if the amount of the public debt of the country exceeds the gross domestic product of the country;

''(2) to determine whether or not the loan will be repaid and certify that determination to Congress.

''(b) OPPOSITION TO LOANS UNLIKELY TO BE REPAID.—If the Executive Director determines under subsection (a)(2) that a loan by the International Monetary Fund to a country will not be repaid, the President shall direct the Executive Director to use the voice and vote of the United States to vote in opposition to the proposed loan.''.

SA 3987. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1208, between lines 12 and 13, insert the following:

(f) EXPIRATION.—Notwithstanding any other provision of this Act, the Bureau, and the authority of the Bureau under this title, shall terminate 4 years after the date of enactment of this Act, unless extended by an Act of Congress.

SA 3988. Mrs. GILLIBRAND 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:

(7) STUDY AND REPORT ON PAPER STATEMENT CHARGES.—Not later than 6 months after the date of enactment of this Act, the Office of Financial Literacy shall conduct a study and submit a report to Congress—

(A) on the charging of fees for paper copies of statements related to a consumer financial product or service by covered persons under this title;

(B) the charging of fees for the use of paper checks as payment to covered persons under this title;

(C) on the impact of the imposition of such fees on financial literacy, particularly among—

(i) the elderly;

(ii) low-income individuals; and

(iii) individuals that lack computer access; and

(D) that includes recommendations on how to ensure that the individuals described in subparagraph (C) are not negatively impacted by the imposition of fees to receive paper statements, including recommendations—

(i) on whether covered persons under this title should be—

(I) prohibited from charging fees for paper statements;

(II) prohibited from automatically enrolling individuals in e-statement or other electronic delivery programs without the express consent of the individual, in the manner described in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.); and

(III) prevented from charging fees for the use of paper checks as payment; and

(ii) regarding alternative methods to ensure that such individuals are able to access paper copies of financial statements without fees or unnecessary hindrance.

(8) AUTHORITY TO BAR FEES ON PAPER STATEMENTS.—Not later than 3 months after the submission of the report required under paragraph (7), the Director shall issue rules implementing the recommendations contained in such report.

On page 1297, line 11, before the period, insert '', or in paper form at no additional cost upon request of the consumer''.

SA 3989. Mr. DURBIN submitted an amendment intended to be proposed by

him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

''SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

''(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

''(1) REGULATORY AUTHORITY.—The Board shall have authority to establish rules, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction.

''(2) REASONABLE FEES.—The amount of any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction shall be reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(3) RULEMAKING REQUIRED.—The Board shall issue final rules, not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(4) CONSIDERATIONS.—In issuing rules required by this section, the Board shall—

''(A) consider the functional similarity between—

''(i) electronic debit transactions; and

''(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

''(B) distinguish between—

''(i) the actual incremental cost incurred by an issuer or payment card network for the role of the issuer or the payment card network in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

''(ii) other costs incurred by an issuer or payment card network which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

''(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

''(5) EXEMPTION FOR SMALL ISSUERS.—This subsection shall not apply to issuers that, together with affiliates, have assets of less than $10,000,000,000, and the Board shall exempt such issuers from rules issued under paragraph (3).

''(6) EFFECTIVE DATE.—Paragraph (2) shall become effective 12 months after the date of enactment of the Consumer Financial Protection Act of 2010.

''(b) LIMITATION ON ANTI-COMPETITIVE PAYMENT CARD NETWORK RESTRICTIONS.—

''(1) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A COMPETING PAYMENT CARD NETWORK.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment through the use of a card or device of another payment card network.

''(2) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, check, debit card, or credit card.

''(3) NO RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to set a minimum or maximum dollar value for the acceptance by that person of any form of payment.

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

''(1) DEBIT CARD.—The term 'debit card'—

''(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means;

''(B) includes general use prepaid cards, as that term is defined in section 915(a)(2)(A) (15 U.S.C. 1693l–1(a)(2)(A)); and

''(C) does not include paper checks.

''(2) CREDIT CARD.—The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(3) DISCOUNT.—The term 'discount'—

''(A) means a reduction made from the price that customers are informed is the regular price; and

''(B) does not include any means of increasing the price that customers are informed is the regular price.

''(4) ELECTRONIC DEBIT TRANSACTION.—The term 'electronic debit transaction' means a transaction in which a person uses a debit card to debit an asset account.

''(5) INTERCHANGE TRANSACTION FEE.—The term 'interchange transaction fee' means any fee established by a payment card network that has been established for the purpose of compensating an issuer or payment card network for its involvement in an electronic debit transaction.

''(6) ISSUER.—The term 'issuer' means any person who issues a debit card, or the agent of such person with respect to such card.

''(7) PAYMENT CARD NETWORK.—The term 'payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.''.

SA 3990. Mr. LIEBERMAN (for himself and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 27, strike lines 11 through 19 and insert the following:

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States, including any threats posed by foreign countries or non-state actors who may attempt to disrupt the United States financial markets;

(D) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, enforcement actions, and potential threats to the financial stability of the United States;

SA 3991. Mr. FRANKEN (for himself, Mr. SCHUMER, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. BROWN of Ohio, Mrs. MURRAY, Mr. MERKLEY, Mr. BINGAMAN, Mr. LAUTENBERG, Mrs. SHAHEEN, Mr. CASEY, Mr. WICKER, Mr. SANDERS, Mr. JOHNSON, Mr. KAUFMAN, Mr. GRASSLEY, Mr. DURBIN, Mr. HARKIN, and Ms. KLOBUCHAR) 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 1044, between lines 2 and 3, insert the following:

SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this Act, is amended by adding at the end the following:

''(w) INITIAL CREDIT RATING ASSIGNMENTS.—

''(1) DEFINITIONS.—In this subsection the following definitions shall apply:

''(A) BOARD.—The term 'Board' means the Credit Rating Agency Board established under paragraph (2).

''(B) QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'qualified nationally recognized statistical rating organization', with respect to a category of structured finance products, means a nationally recognized statistical rating organization that the Board determines, under paragraph (3)(B), to be qualified to issue initial credit ratings with respect to such category.

''(C) REGULATIONS.—

''(i) CATEGORY OF STRUCTURED FINANCE PRODUCTS.—

''(I) IN GENERAL.—The term 'category of structured finance products'—

''(aa) shall include any asset backed security and any structured product based on an asset-backed security; and

''(bb) shall be further defined and expanded by the Commission, by rule, as necessary.

''(II) CONSIDERATIONS.—In issuing the regulations required under subclause (I), the Commission shall consider—

''(aa) the types of issuers that issue structured finance products;

''(bb) the types of investors who purchase structured finance products;

''(cc) the different categories of structured finance products according to—

''(AA) the types of capital flow and legal structure used;

''(BB) the types of underlying products used; and

''(CC) the types of terms used in debt securities;

''(dd) the different values of debt securities; and

''(ee) the different numbers of units of debt securities that are issued together.

''(ii) REASONABLE FEE.—The Board shall issue regulations to define the term 'reasonable fee'.

''(2) CREDIT RATING AGENCY BOARD.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall—

''(i) establish the Credit Rating Agency Board, which shall be a self-regulatory organization;

''(ii) subject to subparagraph (C), select the initial members of the Board; and

''(iii) establish a schedule to ensure that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings not later than 1 year after the selection of the members of the Board.

''(B) SCHEDULE.—The schedule established under subparagraph (A)(iii) shall prescribe when—

''(i) the Board will conduct a study of the securitization and ratings process and provide recommendations to the Commission;

''(ii) the Commission will issue rules and regulations under this section;

''(iii) the Board may issue rules under this subsection; and

''(iv) the Board will—

''(I) begin accepting applications to select qualified national recognized statistical rating organizations; and

''(II) begin assigning qualified national recognized statistical rating organizations to provide initial ratings.

''(C) MEMBERSHIP.—

''(i) IN GENERAL.—The Board shall initially be composed of an odd number of members selected from the industry, with the total numerical membership of the Board to be determined by the Commission.

''(ii) SPECIFICATIONS.—Of the members initially selected to serve on the Board—

''(I) not less than a majority of the members shall be representatives of the investor industry who do not represent issuers;

''(II) not less than 1 member should be a representative of the issuer industry;

''(III) not less than 1 member should be a representative of the credit rating agency industry; and

''(IV) not less than 1 member should be an independent member.

''(iii) TERMS.—Initial members shall be appointed by the Commission for a term of 4 years.

''(iv) NOMINATION AND ELECTION OF MEMBERS.—

''(I) IN GENERAL.—Prior to the expiration of the terms of office of the initial members, the Commission shall establish fair procedures for the nomination and election of future members of the Board.

''(II) MODIFICATIONS OF THE BOARD.—Prior to the expiration of the terms of office of the initial members, the Commission—

''(aa) may increase the size of the board to a larger odd number and adjust the length of future terms; and

''(bb) shall retain the composition of members described in clause (ii).

''(v) RESPONSIBILITIES OF MEMBERS.—Members shall perform, at a minimum, the duties described in this subsection.

''(vi) RULEMAKING AUTHORITY.—The Commission shall, if it determines necessary and appropriate, issue further rules and regulations on the composition of the membership of the Board and the responsibilities of the members.

''(D) OTHER AUTHORITIES OF THE BOARD.—The Board shall have the authority to levy fees from qualified nationally recognized statistical rating organization applicants, and periodically from qualified nationally recognized statistical rating organizations as necessary to fund expenses of the Board.

''(E) REGULATION.—The Commission has the authority to regulate the activities of the Board, and issue any further regulations of the Board it deems necessary, not in contravention with the intent of this section.

''(3) BOARD SELECTION OF QUALIFIED NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—

''(A) APPLICATION.—

''(i) IN GENERAL.—A nationally recognized statistical rating organization may submit an application to the Board, in such form and manner as the Board may require, to become a qualified nationally recognized statistical rating organization with respect to a category of structured finance products.

''(ii) CONTENTS.—An application submitted under clause (i) shall contain—

''(I) information regarding the institutional and technical capacity of the nationally recognized statistical rating organization to issue credit ratings;

''(II) information on whether the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section; and

''(III) any additional information the Board may require.

''(iii) REJECTION OF APPLICATIONS.—The Board may reject an application submitted under this paragraph if the nationally recognized statistical rating organization has been exempted by the Commission from any requirements under any other provision of this section.

''(B) SELECTION.—The Board shall select qualified national recognized statistical rating organizations with respect to each category of structured finance products from among nationally recognized statistical rating organizations that submit applications under subparagraph (A).

''(C) RETENTION OF STATUS AND OBLIGATIONS AFTER SELECTION.—An entity selected as a qualified nationally recognized statistical rating organization shall retain its status and obligations under the law as a nationally recognized statistical rating organization, and nothing in this subsection grants authority to the Commission or the Board to exempt qualified nationally recognized statistical rating organizations from obligations or requirements otherwise imposed by Federal law on nationally recognized statistical rating organizations

''(4) REQUESTING AN INITIAL CREDIT RATING.—An issuer that seeks an initial credit rating for a structured finance product—

''(A) may not request an initial credit rating from a nationally recognized statistical rating organization; and

''(B) shall submit a request for an initial credit rating to the Board, in such form and manner as the Board may prescribe.

''(5) ASSIGNMENT OF RATING DUTIES.—

''(A) IN GENERAL.—For each request received by the Board under paragraph (4)(B), the Board shall select a qualified nationally recognized statistical rating organization to provide the initial credit rating to the issuer.

''(B) METHOD OF SELECTION.—

''(i) IN GENERAL.—The Board shall—

''(I) evaluate a number of selection methods, including a lottery or rotating assignment system, incorporating the factors described in clause (ii), to reduce the conflicts of interest that exist under the issuer-pays model; and

''(II) prescribe and publish the selection method to be used under subparagraph (A).

''(ii) CONSIDERATION.—In evaluating a selection method described in clause (i)(I), the Board shall consider—

''(I) the information submitted by the qualified nationally recognized statistical rating organization under paragraph (3)(A)(ii) regarding the institutional and technical capacity of the qualified nationally recognized statistical rating organization to issue credit ratings;

''(II) evaluations conducted under paragraph (7);

''(III) formal feedback from institutional investors; and

''(IV) information from subclauses (I) and (II) to implement a mechanism which increases or decreases assignments based on past performance.

''(iii) PROHIBITION.—The Board, in choosing a selection method, may not use a method that would allow for the solicitation or consideration of the preferred national recognized statistical rating organizations of the issuer.

''(iv) ADJUSTMENT OF PROCESS.—The Board shall issue rules describing the process by which it can modify the assignment process described in clause (i).

''(C) RIGHT OF REFUSAL.—

''(i) REFUSAL.—A qualified nationally recognized statistical rating organization selected under subparagraph (A) may refuse to accept a selection for a particular request by—

''(I) notifying the Board of such refusal; and

''(II) submitting to the Board a written explanation of the refusal.

''(ii) SELECTION.—Upon receipt of a notification under clause (i), the Board shall make an additional selection under subparagraph (A).

''(iii) INSPECTION REPORTS.—The Board shall annually submit any explanations of refusals received under clause (i)(II) to the Commission, and such explanatory submissions shall be published in the annual inspection reports required under subsection (p)(3)(C).

''(6) DISCLAIMER REQUIRED.—Each initial credit rating issued under this subsection shall include, in writing, the following disclaimer: 'This initial rating has not been evaluated, approved, or certified by the Government of the United States or by a Federal agency.'.

''(7) EVALUATION OF PERFORMANCE.—

''(A) IN GENERAL.—The Board shall prescribe rules by which the Board will evaluate the performance of each qualified nationally recognized statistical rating organization, including rules that require, at a minimum, an annual evaluation of each qualified nationally recognized statistical rating organization.

''(B) CONSIDERATIONS.—The Board, in conducting an evaluation under subparagraph (A), shall consider—

''(i) the results of the annual examination conducted under subsection (p)(3);

''(ii) surveillance of credit ratings conducted by the qualified nationally recognized statistical rating organization after the credit ratings are issued, including—

''(I) how the rated instruments perform;

''(II) the accuracy of the ratings provided by the qualified nationally recognized statistical rating organization as compared to the other nationally recognized statistical rating organizations; and

''(III) the effectiveness of the methodologies used by the qualified nationally recognized statistical rating organization; and

''(iii) any additional factors the Board determines to be relevant.

''(C) REQUEST FOR REEVALUATION.—Subject to rules prescribed by the Board, and not less frequently than once a year, a qualified nationally recognized statistical rating organization may request that the Board conduct an evaluation under this paragraph.

''(D) DISCLOSURE.—The Board shall make the evaluations conducted under this paragraph available to Congress.

''(8) RATING FEES CHARGED TO ISSUERS.—

''(A) LIMITED TO REASONABLE FEES.—A qualified nationally recognized statistical rating organization shall charge an issuer a reasonable fee, as determined by the Commission, for an initial credit rating provided under this section.

''(B) FEES.—Fees may be determined by the qualified national recognized statistical rating organizations unless the Board determines it is necessary to issue rules on fees.

''(9) NO PROHIBITION ON ADDITIONAL RATINGS.—Nothing in this section shall prohibit an issuer from requesting or receiving additional credit ratings with respect to a debt security, if the initial credit rating is provided in accordance with this section.

''(10) NO PROHIBITION ON INDEPENDENT RATINGS OFFERED BY NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

''(A) IN GENERAL.—Nothing in this section shall prohibit a nationally recognized statistical rating organization from independently providing a credit rating with respect to a debt security, if—

''(i) the nationally recognized statistical rating organization does not enter into a contract with the issuer of the debt security to provide the initial credit rating; and

''(ii) the nationally recognized statistical rating organization is not paid by the issuer of the debt security to provide the initial credit rating.

''(B) RULE OF CONSTRUCTION.—For purposes of this section, a credit rating described in subparagraph (A) may not be construed to be an initial credit rating.

''(11) PUBLIC COMMUNICATIONS.—Any communications made with the public by an issuer with respect to the credit rating of a debt security shall clearly specify whether the credit rating was made by—

''(A) a qualified nationally recognized statistical rating organization selected under paragraph (5)(A) to provide the initial credit rating for such debt security; or

''(B) a nationally recognized statistical rating organization not selected under paragraph (5)(A).

''(12) PROHIBITION ON MISREPRESENTATION.—With respect to a debt security, it shall be unlawful for any person to misrepresent any subsequent credit rating provided for such debt security as an initial credit rating provided for such debt security by a qualified nationally recognized statistical rating organization selected under paragraph (5)(A).

''(13) INITIAL CREDIT RATING REVISION AFTER MATERIAL CHANGE IN CIRCUMSTANCE.—If the Board determines that it is necessary or appropriate in the public interest or for the protection of investors, the Board may issue regulations requiring that an issuer that has received an initial credit rating under this subsection request a revised initial credit rating, using the same method as provided under paragraph (4), each time the issuer experiences a material change in circumstances, as defined by the Board.

''(14) CONFLICTS.—

''(A) MEMBERS OR EMPLOYEES OF THE BOARD.—

''(i) LOAN OF MONEY OR SECURITIES PROHIBITED.—

''(I) IN GENERAL.—A member or employee of the Board shall not accept any loan of money or securities, or anything above nominal value, from any nationally recognized statistical rating organization, issuer, or investor.

''(II) EXCEPTION.—The prohibition in subclause (I) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(ii) EMPLOYMENT NEGOTIATIONS PROHIBITION.—A member or employee of the Board shall not engage in employment negotiations with any nationally recognized statistical rating organization, issuer, or investor, unless the member or employee—

''(I) discloses the negotiations immediately upon initiation of the negotiations; and

''(II) recuses himself from all proceedings concerning the entity involved in the negotiations until termination of negotiations or until termination of his employment by the Board, if an offer of employment is accepted.

''(B) CREDIT ANALYSTS.—

''(i) IN GENERAL.—A credit analyst of a qualified nationally recognized statistical rating organization shall not accept any loan of money or securities, or anything above nominal value, from any issuer or investor.

''(ii) EXCEPTION.—The prohibition described in clause (i) does not apply to a loan made in the context of disclosed, routine banking and brokerage agreements, or a loan that is clearly motivated by a personal or family relationship.

''(15) EVALUATION OF CREDIT RATING AGENCY BOARD.—Not later than 5 years after the date that the Board begins assigning qualified nationally recognized statistical rating organizations to provide initial ratings, the Commission shall submit to Congress a report that provides recommendations of—

''(A) the continuation of the Board;

''(B) any modification to the procedures of the Board; and

''(C) modifications to the provisions in this subsection.''.

SA 3992. Mr. CRAPO proposed an amendment to amendment SA 3956 proposed by Ms. LANDRIEU (for herself, Mr. ISAKSON, Mrs. HAGAN, Mr. WARNER, and Mr. MENENDEZ) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 1 of the amendment, strike line 3 and all that follows through page 3, line 7, and insert the following:

''(i) a portion of the credit risk for any asset that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer; or

''(ii) a reduced portion or no portion of the credit risk for an asset described in clause (i), if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B) or subsection (e)(4);

''(C) specify—

''(i) the permissible types, forms, and amounts of risk retention that would meet the requirements of subparagraph (B), including—

''(I) retention of—

''(aa) a specified amount or percentage of the total credit risk of the asset;

''(bb) the value of securities sold to investors; or

''(cc) the interest of the seller in revolving assets;

''(II) retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first-loss position and provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities;

''(III) a determination by a Federal banking agency or the Commission that the underwriting standards and controls of the originator are adequate for risk retention purposes; and

''(IV) provision of adequate representations and warranties and related enforcement mechanisms; and

''(ii) the minimum duration of the risk retention required under this section;

SA 3993. Ms. STABENOW (for herself 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 580, line 20, insert ''and involved in hedging activities related to'' after ''engaged in''.

On page 580, lines 24 and 25, strike ''only if the affiliate'' and insert ''as can affiliates''.

On page 581, line 1, strike ''uses'' and insert ''using''.

On page 582, between lines 6 and 7, insert the following:

''(iii) TRANSITION RULE.—

''(I) IN GENERAL.—An affiliate or a wholly owned entity of a commercial end user that is predominantly engaged in providing financing for the purchase of merchandise or manufactured goods of the commercial end user affiliate shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 3-year period beginning on the date of enactment of this clause.

''(II) AUTHORITY OF COMMISSION.—On the date on which the 3-year period described in subclause (I) ends, the Commission may extend the exemption described in that subclause for an additional 1-year period if the Commission determines the extension to be in the public interest and publishes in the Federal Register the order granting the extension (including each reason for the extension).''.

On page 653, line 22, strike ''and such counterparty'' and insert ''except if such counterparty''.

On page 653, line 23, strike ''and'' and insert ''and is''.

SA 3994. Mr. SPECTER 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 1004, line 11, strike the period at the end and insert the following: ''.

SEC. 929D. PRIVATE CIVIL ACTION FOR AIDING AND ABETTING.

Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended—

(1) in the subsection heading, by striking ''PROSECUTION OF'' and inserting ''ACTIONS AGAINST'';

(2) by striking ''For purposes'' and inserting the following:

''(1) ACTIONS BROUGHT BY COMMISSION.—For purposes''; and

(3) by adding at the end the following:

''(2) PRIVATE CIVIL ACTIONS.—For purposes of any private civil action implied under this title, any person that knowingly provides substantial assistance to another person in violation of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of this title to the same extent as the person to whom such assistance is provided. For purposes of this paragraph, a person acts knowingly only if the person has actual knowledge of the improper conduct underlying the violation described in the preceding sentence and the role of the person in assisting such conduct.''.

SA 3995. 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 1304, between lines 5 and 6, insert the following:

(e) STUDY AND REPORT ON PRIVATE EDUCATION LOANS AND PRIVATE EDUCATIONAL LENDERS.—

(1) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director and the Secretary of Education, in consultation with the Commissioners of the Federal Trade Commission and the Attorney General, shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives on private education loans and private educational lenders (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)).

(2) CONTENT.—The report required by this subsection shall examine, at a minimum, the following:

(A) The growth and changes of the private education loan market in the United States.

(B) Factors influencing such growth and changes.

(C) The extent to which students and parents of students rely on private education loans to finance postsecondary education and the private education loan indebtedness of borrowers.

(D) The characteristics of private education loan borrowers, including—

(i) the types of institutions of higher education such borrowers attend;

(ii) socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender);

(iii) the other forms of financing borrowers use to pay for education;

(iv) whether borrowers exhaust their Federal loan options before taking out a private education loan;

(v) whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk)) or parents of such students;

(vi) whether such borrowers are students enrolled in a program leading to a certificate, license, or credential other than a degree, an associate's degree, a baccalaureate degree, or a graduate or professional degree; and

(vii) if practicable, employment and repayment behaviors.

(E) The characteristics of private educational lenders, including whether such lenders are for-profit, nonprofit, or institutions of higher education.

(F) The underwriting criteria used by private educational lenders, including the use of the cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965 (20 U.S.C. 1085(m)).

(G) The terms, conditions, and pricing of private education loans.

(H) The consumer protections available to private education loan borrowers, including the effectiveness of existing disclosures and requirements and borrowers' awareness and understanding about terms and conditions of various financial products.

(I) Whether Federal regulators and the public have access to information—

(i) sufficient to provide them with assurances that private education loans are provided in accord with the fair lending laws of the United States; and

(ii) that allows public officials to determine lenders' compliance with fair lending laws.

(J) Any statutory or legislative recommendations necessary to improve consumer protections for private education loan borrowers and to better enable Federal regulators and the public to ascertain private educational lender compliance with fair lending laws.

SA 3996. Mr. COBURN (for himself and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3775 submitted by Mr. WYDEN (for himself and Mr. GRASSLEY) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. ____. STOP SECRET SPENDING ACT.

(a) SHORT TITLE.—This section may be cited as the ''Stop Secret Spending Act''.

(b) NOTICE REQUIREMENT.—In the Senate, legislation that has been subject to a hotline notification may not pass by unanimous consent unless the hotline notification has been posted on the public website of the Senate for at least 3 calendar days as provided in subsection (c).

(c) POSTING ON SENATE WEBPAGE.—At the same time as a hotline notification occurs with respect to any legislation, the Majority Leader shall post in a prominent place on the public webpage of the Senate a notice that the legislation has been hotlined and the legislation's number, title, link to full text, and sponsor and the estimated cost to implement and the number of new programs created by the legislation.

(d) LEGISLATIVE CALENDAR.—

(1) IN GENERAL.—The Secretary of the Senate shall establish for both the Senate Calendar of Business and the Senate Executive Calendar a separate section entitled ''Notice of Intent To Pass by Unanimous Consent''.

(2) CONTENT.—The section required by paragraph (1) shall—

(A) include any legislation posted as required by subsection (c) and the date the hotline notification occurred; and

(B) be updated as appropriate.

(3) REMOVAL.—Items included on the calendar under this subsection shall be removed from the calendar once passed by the Senate.

(e) EXCEPTIONS.—This section shall not apply—

(1) if a quorum of the Senate is present at the time the unanimous consent is propounded to pass the bill;

(2) to any legislation relating to an imminent or ongoing emergency, as jointly agreed to by the Majority and Minority Leaders; and

(3) to nominations.

(f) SUSPENSION.—The Presiding Officer shall not entertain any request to suspend this section by unanimous consent.

(g) HOTLINE NOTIFICATION DEFINED.—In this section, the term ''hotline notification'' means when the Majority Leader in consultation with the Minority Leader, provides notice of intent to pass legislation by unanimous consent by contacting each Senate office with a message on a special alert line (commonly referred to as the hotline) that provides information on what bill or bills the Majority Leader is seeking to pass through unanimous consent.

SA 3997. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, Mr. JOHNSON, Mr. WHITEHOUSE, Mr. LAUTENBERG, Mrs. BOXER, and Mr. MERKLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1565, after line 23, add the following:

TITLE XIII—CONGO CONFLICT MINERALS

SEC. 1301. SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

It is the sense of Congress that the exploitation and trade of columbite-tantalite, cassiterite, gold, and wolframite in the eastern Democratic Republic of Congo is helping to finance extreme levels of violence in the eastern Democratic Republic of Congo, particularly sexual and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302.

SEC. 1302. DISCLOSURE TO SECURITIES AND EXCHANGE COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by section 763 of this Act, is further amended by adding at the end the following new subsection:

''(o) DISCLOSURES TO COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Commission shall promulgate rules requiring any person described in paragraph (2)—

''(A) to disclose annually to the Commission in a report—

''(i) whether the columbite-tantalite, cassiterite, gold, or wolframite that was necessary as described in paragraph (2)(A)(ii) in the year for which such report is submitted originated or may have originated in the Democratic Republic of Congo or an adjoining country; and

''(ii) a description of the measures taken by the person, which may include an independent audit, to exercise due diligence on the source and chain of custody of such columbite-tantalite, cassiterite, gold, or wolframite, or derivatives of such minerals, in order to ensure that the activities of such person that involve such minerals or derivatives did not directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or an adjoining country; and

''(B) make the information disclosed under subparagraph (A) available to the public on the Internet website of the person.

''(2) PERSON DESCRIBED.—

''(A) IN GENERAL.—A person is described in this paragraph if—

''(i) the person is required to file reports to the Commission under subsection (a)(2); and

''(ii) columbite-tantalite, cassiterite, gold, or wolframite is necessary to the functionality or production of a product manufactured by such person.

''(B) DERIVATIVES.—For purposes of this paragraph, if a derivative of a mineral is necessary to the functionality or production of a product manufactured by a person, such mineral shall also be considered necessary to the functionality or production of a product manufactured by the person.

''(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President determines that such revision or waiver is in the public interest.

''(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall terminate on the date that is 5 years after the date of the enactment of this subsection.

''(B) EXTENSION BY SECRETARY OF STATE.—The date described in subparagraph (A) shall be extended by 1 year for each year in which the Secretary of State certifies that armed parties to the ongoing armed conflict in the Democratic Republic of Congo or adjoining countries continue to be directly involved and benefitting from commercial activity involving columbite-tantalite, cassiterite, gold, or wolframite.

''(5) ADJOINING COUNTRY DEFINED.—In this subsection, the term 'adjoining country', with respect to the Democratic Republic of Congo, means a country that shares an internationally recognized border with the Democratic Republic of Congo.''.

SEC. 1303. REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that includes the following:

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302, in promoting peace and security in the eastern Democratic Republic of Congo.

(2) A description of the problems, if any, encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(o).

(3) A description of the adverse impacts of carrying out the provisions of such section 13(o), if any, on communities in the eastern Democratic Republic of Congo.

(4) Recommendations for legislative or regulatory actions that can be taken—

(A) to improve the effectiveness of the provisions of such section 13(o) to promote peace and security in the eastern Democratic Republic of Congo;

(B) to resolve the problems described pursuant to paragraph (2), if any; and

(C) to mitigate the adverse impacts described pursuant paragraph (3), if any.

SA 3998. Mr. BUNNING 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 1552, strike line 8 and all that follows through page 1553, line 6, and insert the following:

SEC. 1157. ACCOUNTABILITY, TRANSPARENCY, AND REFORMS.

(a) TERM LIMITS FOR THE CHAIRMAN AND VICE CHAIRMEN.—The third sentence of the second undesignated paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 242), as amended by section 1158(a)(1) of this Act, is amended by inserting before the period at the end the following: '', provided that no person shall be designated to serve as Chairman of the Board more than twice and no person shall be designated to serve as a Vice Chairman of the Board more than twice''.

(b) FEDERAL RESERVE ACT EMERGENCY LENDING AUTHORITY.—The third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) (relating to emergency lending authority), as amended by section 1151 of this Act, is amended by inserting ''and the majority of the presidents or first vice presidents of the Federal reserve banks'' after ''not less than five members''.

(c) STAFF FOR MEMBERS OF THE BOARD OF GOVERNORS.—Section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)) is amended in the first sentence by inserting '', including independent staff for each member of the Board'' before the period at the end.

(d) FEDERAL OPEN MARKET COMMITTEE.—Section 12A(a) of the Federal Reserve Act (12 U.S.C. 263(a)) is amended by striking ''five representatives'' and all that follows and inserting ''the presidents or first vice presidents of the Federal reserve banks. Any action of the Committee shall require approval by a majority of the presidents or first vice presidents of the Federal reserve banks and a majority of the members of the Board of Governors of the Federal Reserve System. The Chairman of the Board of Governors of the Federal Reserve System shall not cast a vote except in the case of a tie. Each member of the Committee shall have the right to debate and be accompanied by staff. At the first meeting of each calendar year, the Committee shall elect a Chairman and Vice Chairman. The Chairman and Vice Chairman may not both be members of the Board of Governors of the Federal Reserve System and a member of the Committee may not be elected to consecutive terms as Vice Chairman. The meetings of the Committee shall be held at Washington, District of Columbia, at least 4 times each year, upon the call of the chairman of the Board of Governors of the Federal Reserve System or at the request of any 3 members of the Committee.''.

(e) MONETARY POLICY TO BE CONDUCTED BY THE FEDERAL OPEN MARKET COMMITTEE.—Section 19(b)(12)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(12)(A)) is amended by striking ''not to exceed the general level of short-term interest rates'' and inserting ''determined by the Federal Open Market Committee''.

(f) TRANSPARENCY; SUNSHINE ACT APPLIES TO THE FEDERAL RESERVE.—Section 552b of title 5, United States Code, is amended—

(1) in subsection (a)(1), by inserting ''the Board of Governors of the Federal Reserve System, the Federal Open Market Committee, and'' after ''means'';

(2) in subsection (f)—

(A) in paragraph (1), by striking ''each meeting,'' and all that follows and inserting ''each meeting.''; and

(B) in paragraph (2)—

(i) by striking ''transcript, electronic recording, or minutes (as required by paragraph (1))'' and inserting ''transcript or electronic recording'';

(ii) by striking ''of such transcript, or minutes,'' and inserting ''of such transcript'';

(iii) by striking '', a complete copy of the minutes,''; and

(iv) by adding before the period at the end '', except that the Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain such transcript or electronic recording permanently'';

(3) in subsection (k)—

(A) by striking ''transcripts, recordings, or minutes'' and inserting ''transcripts or recordings''; and

(B) by striking ''transcripts, recordings, and minutes'' and inserting ''transcripts and recordings''; and

(4) in subsection (m), by striking ''transcripts, recordings, or minutes'' and inserting ''transcripts or recordings''.

(g) PUBLIC ACCESS TO INFORMATION.—Section 2B of the Federal Reserve Act (12 U.S.C. 225b) is amended—

(1) in subsection (c), as added by section 1153 of this Act—

(A) in the matter preceding paragraph (1), by striking ''shall serve as a repository of information made available to the public for a reasonable period of time, not less than 6

months following the date of release of the relevant information, including—'' and inserting ''shall serve as a permanent repository of information made available to the public, which shall be made available on the webpage not later than 7 days after the date of release of the relevant information, including—'';

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

(C) by redesignating paragraph (4) as paragraph (6); and

(D) by adding at the end the following:

''(4) any audit of or report on the Board or the Federal Open Market Committee prepared by the Comptroller General of the United States;

''(5) the reports, minutes, transcripts, and other disclosures required under subsection (c); and'';

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following:

''(c) ADDITIONAL REPORTS AND DISCLOSURES.—

''(1) BOARD.—

''(A) IN GENERAL.—The Board shall make publicly available—

''(i) an announcement of any actions taken by the Board at any meeting, at the conclusion of such meeting, including the votes of members of the Board;

''(ii) minutes of any meeting, not later than 30 days after the date of such meeting;

''(iii) transcripts of any meeting, not later than 1 year after the date of such meeting; and

''(iv) except as provided in subparagraph (B)—

''(I) not later than 1 year after providing any loan or other financial assistance to any entity, a report that includes—

''(aa) the justification for the exercise of authority to provide such assistance;

''(bb) the identity of the recipients of such assistance;

''(cc) the date and amount of the assistance, and the form in which the assistance was provided; and

''(dd) the material terms of the assistance, including—

''(AA) the duration;

''(BB) the collateral pledged and the value thereof;

''(CC) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

''(DD) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

''(EE) the expected costs to the United States of the assistance; and

''(II) 30 days after the date on which a report is made available under subclause (I), and every 30 days thereafter, written updates on—

''(aa) the value of collateral;

''(bb) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

''(cc) the expected or final cost to the United States of the assistance.

''(B) EXCEPTION.—If the Board, by the affirmative vote of not less than 5 members and the majority of the presidents or first vice presidents of the Federal reserve banks, determines that making the report required under subparagraph (A)(iv) publicly available at that time would not be in the public interest, public release of such report may be delayed by the Board for not more than 180 days, and, following a second such affirmative vote, for not more than 180 additional days, if the Board—

''(i) provides the report and any applicable updates required in subparagraph (A)(iv) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives within the time periods specified in subparagraph (A)(iv); and

''(ii) makes publicly available a statement—

''(I) describing the report withheld;

''(II) explaining the reasons for the determination that release of such report is not in the public interest; and

''(III) including the votes of the members of the Board on such determination.

''(2) FOMC.—The Federal Open Market Committee shall make publicly available—

''(A) at the conclusion of any meeting an announcement of any actions taken by the Committee at such meeting, including the votes of members of the Committee;

''(B) minutes of any meeting, not later than 30 days after the date of such meeting;

''(C) transcripts of any meeting, not later than 1 year after the date of such meeting.''.

(h) AGE DISCRIMINATION.—Section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)) is amended by striking ''and the Library of Congress'' and inserting ''the Library of Congress, the Board of Governors of the Federal Reserve System, and the Federal reserve banks''.

(i) REPORTS.—

(1) GAO REPORT ON MONETARY STATISTICS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the use of monetary statistics of the Board of Governors.

(B) CONTENTS.—The report under subparagraph (A) shall examine the scientific validity of the measures used by the Board of Governors, the usefulness of the measures, potential changes to the measures, and potential alternatives and additions to the measures.

(C) CONSULTATION.—In preparing the report under subparagraph (A), the Comptroller General shall consult, at a minimum, with—

(i) current and former policy and economic experts of the Board of Governors, the Federal Open Market Committee, and the Federal reserve banks;

(ii) economic and statistical staff of other Federal agencies;

(iii) academic economists and statisticians;

(iv) economic and statistical practitioners; and

(v) experts from other governments and international organizations.

(2) FEDERAL OPEN MARKET COMMITTEE REPORT ON ADOPTING A MONETARY POLICY RULE.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Federal Open Market Committee shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the feasibility and desirability of setting a monetary policy rule or guidelines.

(B) CONTENTS.—The report under subparagraph (A) shall examine multiple methods of setting the rules or guidelines described in subparagraph (A) and include an analysis of how the rules or guidelines would provide for accountability in fulfilling the mandate of the Committee and the Board of Governors.

(C) PARTICIPATION.—All members of the Board of Governors and each president of a Federal reserve bank, regardless of voting status in the year in which the report is prepared, shall be entitled to participate in and comment on the report under subparagraph (A).

(j) EFFECT ON OTHER LAWS.—Other than as expressly provided in this Act, or an amendment made by this Act, nothing in this Act or an amendment made by this Act shall be construed to alter the public disclosure obligations of the Board of Governors, the Federal Open Market Committee, or the Federal reserve banks, including obligations under section 552 of title 5, United States Code (commonly known as ''the Freedom of Information Act''), or any other provision of law.

SA 3999. Mr. BUNNING 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 1522, between lines 14 and 15, insert the following:

(2) by inserting ''and the majority of the presidents or first vice presidents of the Federal reserve banks'' after ''not less than five members'';

On page 1522, line 15, strike ''(2)'' and insert ''(3)''.

On page 1522, line 19, strike ''(3)'' and insert ''(4)''.

On page 1522, line 22, strike ''(4)'' and insert ''(5)''.

On page 1523, line 1, strike ''(5)'' and insert ''(6)''.

On page 1523, line 4, strike ''(6)'' and insert ''(7)''.

On page 1533, strike lines 7 through 13 and insert the following:

''(c) ADDITIONAL REPORTS AND DISCLOSURES.—

''(1) BOARD.—

''(A) IN GENERAL.—The Board shall make publicly available—

''(i) an announcement of any actions taken by the Board at any meeting, at the conclusion of such meeting, including the votes of members of the Board;

''(ii) minutes of any meeting, not later than 30 days after the date of such meeting;

''(iii) transcripts of any meeting, not later than 1 year after the date of such meeting; and

''(iv) except as provided in subparagraph (B)—

''(I) not later than 1 year after providing any loan or other financial assistance to any entity, a report that includes—

''(aa) the justification for the exercise of authority to provide such assistance;

''(bb) the identity of the recipients of such assistance;

''(cc) the date and amount of the assistance, and the form in which the assistance was provided; and

''(dd) the material terms of the assistance, including—

''(AA) the duration;

''(BB) the collateral pledged and the value thereof;

''(CC) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

''(DD) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

''(EE) the expected costs to the United States of the assistance; and

''(II) 30 days after the date on which a report is made available under subclause (I), and every 30 days thereafter, written updates on—

''(aa) the value of collateral;

''(bb) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

''(cc) the expected or final cost to the United States of the assistance.

''(B) EXCEPTION.—If the Board, by the affirmative vote of not less than 5 members and the majority of the presidents or first vice presidents of the Federal reserve banks, determines that making the report required under subparagraph (A)(iv) publicly available at that time would not be in the public interest, public release of such report may be delayed by the Board for not more than 180 days, and, following a second such affirmative vote, for not more than 180 additional days, if the Board—

''(i) provides the report and any applicable updates required in subparagraph (A)(iv) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives within the time periods specified in subparagraph (A)(iv); and

''(ii) makes publicly available a statement—

''(I) describing the report withheld;

''(II) explaining the reasons for the determination that release of such report is not in the public interest; and

''(III) including the votes of the members of the Board on such determination.

''(2) FOMC.—The Federal Open Market Committee shall make publicly available—

''(A) at the conclusion of any meeting an announcement of any actions taken by the Committee at such meeting, including the votes of members of the Committee;

''(B) minutes of any meeting, not later than 30 days after the date of such meeting;

''(C) transcripts of any meeting, not later than 1 year after the date of such meeting.

''(d) PUBLIC ACCESS TO INFORMATION.—The Board shall place on its home Internet website, a link entitled 'Audit', which shall link to a webpage that shall serve as a permanent repository of information made available to the public, which shall be made available on the webpage not later than 7 days after the date of release of the relevant information, including—

On page 1533, line 23, strike ''and''.

On page 1533, between lines 23 and 24, insert the following:

''(4) any audit of or report on the Board or the Federal Open Market Committee prepared by the Comptroller General of the United States;

''(5) the reports, minutes, transcripts, and other disclosures required under subsection (c); and

On page 1533, line 24, strike ''(4)'' and insert ''(6)''.

On page 1552, strike line 8 and all that follows through page 1553, line 6, and insert the following:

SEC. 1157. ACCOUNTABILITY, TRANSPARENCY, AND REFORMS.

(a) STAFF FOR MEMBERS OF THE BOARD OF GOVERNORS.—Section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)) is amended in the first sentence by inserting '', including independent staff for each member of the Board'' before the period at the end.

(b) FEDERAL OPEN MARKET COMMITTEE.—Section 12A(a) of the Federal Reserve Act (12 U.S.C. 263(a)) is amended by striking ''five representatives'' and all that follows and inserting ''the presidents or first vice presidents of the Federal reserve banks. Any action of the Committee shall require approval by a majority of the presidents or first vice presidents of the Federal reserve banks and a majority of the members of the Board of Governors of the Federal Reserve System. The Chairman of the Board of Governors of the Federal Reserve System shall not cast a vote except in the case of a tie. Each member of the Committee shall have the right to debate and be accompanied by staff. At the first meeting of each calendar year, the Committee shall elect a Chairman and Vice Chairman. The Chairman and Vice Chairman may not both be members of the Board of Governors of the Federal Reserve System and a member of the Committee may not be elected to consecutive terms as Vice Chairman. The meetings of the Committee shall be held at Washington, District of Columbia, at least 4 times each year, upon the call of the chairman of the Board of Governors of the Federal Reserve System or at the request of any 3 members of the Committee.''.

(c) MONETARY POLICY TO BE CONDUCTED BY THE FEDERAL OPEN MARKET COMMITTEE.—Section 19(b)(12)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(12)(A)) is amended by striking ''not to exceed the general level of short-term interest rates'' and inserting ''determined by the Federal Open Market Committee''.

(d) TRANSPARENCY; SUNSHINE ACT APPLIES TO THE FEDERAL RESERVE.—Section 552b of title 5, United States Code, is amended—

(1) in subsection (a)(1), by inserting ''the Board of Governors of the Federal Reserve System, the Federal Open Market Committee, and'' after ''means'';

(2) in subsection (f)—

(A) in paragraph (1), by striking ''each meeting,'' and all that follows and inserting ''each meeting.''; and

(B) in paragraph (2)—

(i) by striking ''transcript, electronic recording, or minutes (as required by paragraph (1))'' and inserting ''transcript or electronic recording'';

(ii) by striking ''of such transcript, or minutes,'' and inserting ''of such transcript'';

(iii) by striking '', a complete copy of the minutes,''; and

(iv) by adding before the period at the end '', except that the Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain such transcript or electronic recording permanently'';

(3) in subsection (k)—

(A) by striking ''transcripts, recordings, or minutes'' and inserting ''transcripts or recordings''; and

(B) by striking ''transcripts, recordings, and minutes'' and inserting ''transcripts and recordings''; and

(4) in subsection (m), by striking ''transcripts, recordings, or minutes'' and inserting ''transcripts or recordings''.

(e) AGE DISCRIMINATION.—Section 15(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(a)) is amended by striking ''and the Library of Congress'' and inserting ''the Library of Congress, the Board of Governors of the Federal Reserve System, and the Federal reserve banks''.

(f) REPORTS.—

(1) GAO REPORT ON MONETARY STATISTICS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the use of monetary statistics of the Board of Governors.

(B) CONTENTS.—The report under subparagraph (A) shall examine the scientific validity of the measures used by the Board of Governors, the usefulness of the measures, potential changes to the measures, and potential alternatives and additions to the measures.

(C) CONSULTATION.—In preparing the report under subparagraph (A), the Comptroller General shall consult, at a minimum, with—

(i) current and former policy and economic experts of the Board of Governors, the Federal Open Market Committee, and the Federal reserve banks;

(ii) economic and statistical staff of other Federal agencies;

(iii) academic economists and statisticians;

(iv) economic and statistical practitioners; and

(v) experts from other governments and international organizations.

(2) FEDERAL OPEN MARKET COMMITTEE REPORT ON ADOPTING A MONETARY POLICY RULE.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Federal Open Market Committee shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the feasibility and desirability of setting a monetary policy rule or guidelines.

(B) CONTENTS.—The report under subparagraph (A) shall examine multiple methods of setting the rules or guidelines described in subparagraph (A) and include an analysis of how the rules or guidelines would provide for accountability in fulfilling the mandate of the Committee and the Board of Governors.

(C) PARTICIPATION.—All members of the Board of Governors and each president of a Federal reserve bank, regardless of voting status in the year in which the report is prepared, shall be entitled to participate in and comment on the report under subparagraph (A).

(g) EFFECT ON OTHER LAWS.—Other than as expressly provided in this Act, or an amendment made by this Act, nothing in this Act or an amendment made by this Act shall be construed to alter the public disclosure obligations of the Board of Governors, the Federal Open Market Committee, or the Federal reserve banks, including obligations under section 552 of title 5, United States Code (commonly known as ''the Freedom of Information Act''), or any other provision of law.

On page 1554, line 2, after ''Supervision'' insert '', provided that no person shall be designated to serve as Chairman of the Board more than twice and no person shall be designated to serve as a Vice Chairman of the Board more than twice''.

SA 4000. Mr. KAUFMAN (for himself, Mr. GRASSLEY, and Mr. BROWN of Ohio) 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 728, between lines 3 and 4, insert the following:

SEC. 760. IMPROVED TRANSPARENCY.

(a) SECURITIES.—Section 11A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(a)(1)) is amended by adding at the end the following:

''(E) Promoting transparency of all markets for securities through dissemination of quotations and orders to all brokers, dealers,

and investors, and minimizing, to the extent consistent with other purposes of this Act, conditions under which quotations and orders are hidden or selectively disseminated, will—

''(i) foster efficiency;

''(ii) enhance competition;

''(iii) increase the information available to brokers, dealers, and investors;

''(iv) facilitate the offsetting of investors' orders; and

''(v) contribute to best execution of such orders.''.

(b) COMMODITIES.—Section 3(b) of the Commodity Exchange Act (7 U.S.C. 5(b)) is amended—

(1) by striking ''and'' following ''customer assets;'';

(2) by striking the period at the end of the second sentence; and

(3) by adding at the end the following: ''; to promote transparency of all markets through dissemination of quotations and orders to all market participants and market professionals; and to minimize, to the extent consistent with other purposes of this Act, conditions under which quotations and orders are hidden or selectively disseminated. Furthering the purposes of this Act will foster efficiency, enhance competition, increase the information available to market participants, facilitate the offsetting of market participants' orders, and contribute to best execution of such orders.''.

SA 4001. Ms. LANDRIEU (for herself and Mr. ISAKSON) 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 page 1051, line 3, 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;

''(D) apply, regardless of whether the securitizer is an insured depository institution; and

''(E) provide for—

''(i) a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors; and

''(ii) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

''(2) ASSET CLASSES.—

''(A) ASSET CLASSES.—The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.

''(B) CONTENTS.—For each asset class established under subparagraph (A), the regulations prescribed under subsection (b) shall establish underwriting standards that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a reduced credit risk with respect to the loan.

''(d) ORIGINATORS.—In determining how to allocate risk retention obligations between a securitizer and an originator under subsection (c)(1)(E)(ii), the Federal banking agencies and the Commission shall—

''(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

''(2) consider—

''(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect reduced credit risk;

''(B) whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and

''(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

''(e) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

''(1) IN GENERAL.—The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

''(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

''(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

''(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

''(3) FARM CREDIT SYSTEM INSTITUTIONS.—A Farm Credit System institution, including the Federal Agricultural Mortgage Corporation, that is chartered and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), shall be exempt from the risk retention provisions of this subsection.

''(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 4002. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. PROHIBITION ON 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 negatively amortizing mortgages.

(2) 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.

(3) Years ago, Federal banking regulators banned negatively amortizing credit card loans as a threat to the safety and soundness of banking institutions.

(4) Federal financial regulators and Inspectors General have testified before Congress that 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 NEGATIVELY AMORTIZING MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end following:

''(n) PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.—

''(1) IN GENERAL.—Any person who sells, transfers, or plans to sell or transfer at least 1,000 mortgages, mortgage-backed securities, or similar financial instruments within a calendar year shall not include or reference in any of such financial instruments any mortgage in which the loan balance may negatively amortize.

''(2) APPLICABILITY.—This subsection does not apply to home equity conversion mortgages, as defined under section 255 of the National Housing Act (commonly referred to as 'reverse mortgages') that are otherwise regulated by a Federal or State agency.

''(3) RULE OF CONSTRUCTION.—As used in this section, the term 'mortgage' shall not be construed to be restricted or limited only to mortgages referred to in section 103(aa).''.

(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.

SA 4003. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

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

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

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

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

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

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

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

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

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

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

SA 4004. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.

(a) PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end following:

''(n) PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.—

''(1) IN GENERAL.—Any person who sells, transfers, or plans to sell or transfer at least 1,000 mortgages, mortgage-backed securities, or similar financial instruments within a calendar year shall not include or reference in any of such financial instruments any mortgage in which the loan balance may negatively amortize.

''(2) APPLICABILITY.—This subsection does not apply to home equity conversion mortgages, as defined under section 255 of the National Housing Act (commonly referred to as 'reverse mortgages') that are otherwise regulated by a Federal or State agency.

''(3) RULE OF CONSTRUCTION.—As used in this section, the term 'mortgage' shall not be construed to be restricted or limited only to mortgages referred to in section 103(aa).''.

(b) EFFECTIVE DATE.—The requirements under subsection (n)(1) of section 129 of the Truth in Lending Act (as added by subsection (b)) shall take effect not later than 180 days after the date of the enactment of this Act.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the hearing scheduled before the Senate Committee on Energy and Natural Resources on Tuesday, May 18, 2010, will now be held in room SR–325 of the Russell Senate Office Building at 11 a.m.

The purpose is to receive testimony from the Administration on issues related to offshore oil and gas exploration including the accident involving the Deepwater Horizon in the Gulf of Mexico.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by email to Abigail_Campbell@energy.senate.gov.

For further information, please contact Linda Lance or Abigail Campbell.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on National Parks. The hearing will be held on Wednesday, May 19, 2010, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the following bills:

S. 349, to establish the Susquehanna Gateway National Heritage Area in the State of Pennsylvania, and for other purposes;

S. 1596, to authorize the Secretary of the Interior to acquire the Gold Hill Ranch in Coloma, California;

S. 1651, to modify a land grant patent issued by the Secretary of the Interior;

S. 1750, to authorize the Secretary of the Interior to conduct a special resource study of the General of the Army George Catlett Marshall National Historic Site at Dodona Manor in Leesburg, Virginia, and for other purposes;

S. 1801, to establish the First State National Historical Park in the State of Delaware, and for other purposes;

S. 1802 and H.R. 685, to require a study of the feasibility of establishing the United States Civil Rights Trail System, and for other purposes;

S. 2953 and H.R. 3388, to modify the boundary of Petersburg National Battlefield in the Commonwealth of Virginia, and for other purposes;

AMENDMENTS SUBMITTED AND PROPOSED

SA 4006. Mr. PRYOR (for himself, Mr. ROBERTS, and 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 ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4007. Mr. CASEY 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 4008. Mr. DORGAN (for himself, Mr. LEVIN, Ms. CANTWELL, Mr. FEINGOLD, Mr. SANDERS, 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 4009. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4010. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4011. Mr. BURRIS 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 4012. Mrs. SHAHEEN (for herself, Mr. BROWN of Massachusetts, Mr. KERRY, Mr. GREGG, and Mr. NELSON of Nebraska) 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 4013. 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 4014. 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 4015. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3823 proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, AND MS. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4016. Mr. UDALL of Colorado (for himself, Mr. LUGAR, Mr . LAUTENBERG, Mr. BOND, Mr. BEGICH, Mr. SCHUMER, Mr. LEVIN, 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 4017. Mr. ENZI (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4018. 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 4019. Mr. DODD (for Mr. WYDEN (for himself, Mr. GRASSLEY, Mr. INHOFE, Mr. BENNET, Mr. UDALL of Colorado, Mr. BROWN of Ohio, Mr. MERKLEY, and Ms. COLLINS)) proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4020. Mr. CRAPO (for himself, Mr. GREGG, Mr. SHELBY, Mr. MCCAIN, Mr. VITTER, Mrs. HUTCHISON, and Mr. CORKER) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4021. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4022. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4023. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4024. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4025. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4026. Mr. REID 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 4027. 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 4028. 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 4029. 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.

SA 4030. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4031. 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.

SA 4032. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3823 proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4033. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4034. 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 4035. 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 4036. Mr. BENNETT 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 4037. Mr. BOND (for himself, Mr. WARNER, Mr. BROWN of Massachusetts, 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 4038. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes.

SA 4039. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, supra.

SA 4040. Mrs. MCCASKILL (for herself and Mr. GRASSLEY) submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4041. 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.

TEXT OF AMENDMENTS ON MAY 12, 2010

SA 4005. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3754 submitted by Mrs. MURRAY and intended to be proposed to

the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, after line 21, add the following:

(3) NO INDEPENDENT MEMBER OF THE COUNCIL.—Notwithstanding any other provision of this section, there shall not be an independent member of the Council.

TEXT OF AMENDMENTS

SA 4006. Mr. PRYOR (for himself, Mr. ROBERTS, and 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 ''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 19, strike line 16 and all that follows through page 21, line 23 and insert the following:

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

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

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

(ii) predominantly engaged (as defined in section 4(n) of the Bank Holding Company Act of 1956) in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

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

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

(ii) predominantly engaged (as defined in section 4(n) of the Bank Holding Company Act of 1956) in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) NONBANK FINANCIAL COMPANY.—The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

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

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

(b) FOREIGN NONBANK FINANCIAL COMPANIES.—

SA 4007. Mr. CASEY 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 1522, between lines 6 and 7, insert the following:

Subtitle I—Appraisal Activities

SEC. 1111. PROPERTY APPRAISAL REQUIREMENTS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129B (as added by this Act) the following new section:

''SEC. 129C. PROPERTY APPRAISAL REQUIREMENTS.

''(a) IN GENERAL.—A creditor may not extend credit in the form of a subprime mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

''(b) APPRAISAL REQUIREMENTS.—

''(1) PHYSICAL PROPERTY VISIT.—An appraisal of property to be secured by a subprime mortgage does not meet the requirement of this section unless it is performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property.

''(2) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

''(A) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

''(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

''(3) QUALIFIED APPRAISER DEFINED.—For purposes of this section, the term 'qualified appraiser' means a person who—

''(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

''(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

''(c) FREE COPY OF APPRAISAL.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a subprime mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

''(d) CONSUMER NOTIFICATION.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at their own expense.

''(e) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of $2,000.

''(f) SUBPRIME MORTGAGE DEFINED.—For purposes of this section, the term 'subprime mortgage' means a residential mortgage loan, other than a reverse mortgage loan insured by the Federal Housing Administration, secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

''(1) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

''(2) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

''(3) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B the following new item:

''129C. Property appraisal requirements.''.

SEC. 1112. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129C (as added by section 1111(a)) the following new section:

''SEC. 129D. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.

''(a) IN GENERAL.—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any unfair or deceptive act or practice as described in or pursuant to regulations prescribed under this section.

''(b) APPRAISAL INDEPENDENCE.—For purposes of subsection (a), unfair and deceptive practices shall include—

''(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe,

or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

''(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

''(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

''(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered.

''(c) EXCEPTIONS.—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to provide 1 or more of the following services:

''(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

''(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

''(3) Correct errors in the appraisal report.

''(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

''(e) MANDATORY REPORTING.—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

''(f) NO EXTENSION OF CREDIT.—In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

''(g) RULEMAKING PROCEEDINGS.—The Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission—

''(1) shall, for purposes of this section, jointly prescribe regulations no later than 180 days after the date of the enactment of this section, and where such regulations have an effective date of no later than 1 year after the date of the enactment of this section, defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations; and

''(2) may jointly issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

''(h) PENALTIES.—

''(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than $10,000 for each day any such violation continues.

''(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting '$20,000' for '$10,000' with respect to all subsequent violations.

''(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129C the following new item:

''129D. Unfair and deceptive practices and acts relating to certain consumer credit transactions.''.

SEC. 1113. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.

(a) CONSUMER PROTECTION MISSION.—

(1) PURPOSES.—Section 1101 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331) is amended by inserting ''and to provide the Appraisal Subcommittee with a consumer protection mandate'' before the period at the end.

(2) FUNCTIONS OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended—

(A) by striking ''and'' at the end of paragraph (3); and

(B) by amending paragraph (4) to read as follows:

''(4) monitor the efforts of, and requirements established by, States and the Federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in consumer credit transactions that are secured by a consumer's principal dwelling; and''.

(3) THRESHOLD LEVELS.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: '', and that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences. In determining whether a threshold level provides reasonable protection for consumers, each Federal financial institutions regulatory agency shall consult with consumer groups and convene a public hearing''.

(b) ANNUAL REPORT OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended at the end by inserting the following new paragraph:

''(5) transmit an annual report to the Congress not later than January 31 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.''.

(c) OPEN MEETINGS.—Section 1104(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3333(b)) is amended by inserting ''in public session after notice in the Federal Register'' after ''shall meet''.

(d) REGULATIONS.—Section 1106 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3335) is amended—

(1) by inserting ''prescribe regulations after notice and opportunity for comment,'' after ''hold hearings''; and

(2) at the end by inserting ''Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, and government agencies, and hold meetings as necessary to support the development of regulations.''.

(e) APPRAISALS AND APPRAISAL REVIEWS.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(1) by striking ''In determining'' and inserting ''(a) IN GENERAL.—In determining'';

(2) in subsection (a) (as designated by paragraph (1)), by inserting before the period the following: '', where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical''; and

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

''(b) APPRAISALS AND APPRAISAL REVIEWS.—All appraisals performed at a property within a State shall be prepared by appraisers licensed or certified in the State where the property is located. All appraisal reviews, including appraisal reviews by a lender, appraisal management company, or other third party organization, shall be performed by an appraiser who is duly licensed or certified by a State appraisal board.''.

(f) APPRAISAL MANAGEMENT SERVICES.—

(1) SUPERVISION OF THIRD PARTY PROVIDERS OF APPRAISAL MANAGEMENT SERVICES.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is further amended—

(A) by amending paragraph (1) to read as follows:

''(1) monitor the requirements established by States—

''(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

''(B) for the registration and supervision of the operations and activities of an appraisal management company;''; and

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

''(7) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.''.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):

''SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.

''(a) IN GENERAL.—The Appraiser Qualifications Board of the Appraisal Foundation shall establish minimum qualifications to be applied by a State in the registration of appraisal management companies. Such qualifications shall include a requirement that such companies—

''(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

''(2) verify that only licensed or certified appraisers are used for federally related transactions;

''(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

''(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129C of the Truth in Lending Act.

''(b) EXCEPTION FOR FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection (a) shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency. In such case, the appropriate federal financial institutions regulatory agency shall, at a minimum, develop regulations affecting the operations of the appraisal management company to—

''(1) verify that only licensed or certified appraisers are used for federally related transactions;

''(2) require that appraisals coordinated by an institution or subsidiary providing appraisal management services comply with the Uniform Standards of Professional Appraisal Practice; and

''(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129C of the Truth in Lending Act.

''(c) REGISTRATION LIMITATIONS.—An appraisal management company shall not be registered by a State if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

''(d) REGULATIONS.—The Appraisal Subcommittee shall promulgate regulations to implement the minimum qualifications developed by the Appraiser Qualifications Board under this section, as such qualifications relate to the State appraiser certifying and licensing agencies. The Appraisal Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee.

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

''(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.''.

(3) STATE APPRAISER CERTIFYING AND LICENSING AGENCY AUTHORITY.—Section 1117 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: ''The duties of such agency may additionally include the registration and supervision of appraisal management companies.''.

(4) APPRAISAL MANAGEMENT COMPANY DEFINITION.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350) is amended by adding at the end the following:

''(11) APPRAISAL MANAGEMENT COMPANY.—The term 'appraisal management company' means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

''(A) to recruit, select, and retain appraisers;

''(B) to contract with licensed and certified appraisers to perform appraisal assignments;

''(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

''(D) to review and verify the work of appraisers.''.

(g) STATE AGENCY REPORTING REQUIREMENT.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

''(2) transmit reports on sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

''(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and''.

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 9503(g)) to read as follows:

''(4) collect—

''(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

''(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

''(i) in the case of such a company that has been in existence for more than a year, $25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this title; and

''(ii) in the case of such a company that has not been in existence for more than a year, $25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such $25 amount may be adjusted, up to a maximum of $50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this title.''; and

(B) by amending the matter following paragraph (4), as redesignated, to read as follows:

''Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of $80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.''.

(2) INCREMENTAL REVENUES.—Incremental revenues collected pursuant to the increases required by this subsection shall be placed in a separate account at the United States Treasury, entitled the ''Appraisal Subcommittee Account''.

(i) GRANTS AND REPORTS.—Section 1109(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

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

''(5) to make grants to State appraiser certifying and licensing agencies to support the efforts of such agencies to comply with this title, including—

''(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

''(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

''(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.''.

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the ''Appraisal Subcommittee Account'' pursuant to subsection (h).

(j) CRITERIA.—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting ''whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers'' before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

''(e) MINIMUM QUALIFICATION REQUIREMENTS.—Any requirements established for individuals in the position of 'Trainee Appraiser' and 'Supervisory Appraiser' shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.''.

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:

''(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

''(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

''(2) processes complaints and completes investigations in a reasonable time period;

''(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

''(4) maintains an effective regulatory program; and

''(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analyses of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.''.

(2) in subsection (b)(2), by inserting after ''authority'' the following: ''or sufficient funding''.

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

''(b) RECIPROCITY.—A State appraiser certifying or licensing agency shall issue a reciprocal certification or license for an individual from another State when—

''(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

''(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.''.

(m) CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(d)) is amended by striking ''shall not exclude'' and all that follows through the end of the subsection and inserting the following: ''may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.''.

(n) APPRAISER INDEPENDENCE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by adding at the end the following new subsection:

''(g) APPRAISER INDEPENDENCE MONITORING.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.''.

(o) APPRAISER EDUCATION.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by inserting after subsection (g) (as added by subsection (l) of this section) the following new subsection:

''(h) APPROVED EDUCATION.—The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board's Course Approval Program.''.

(p) APPRAISAL COMPLAINT HOTLINE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is further amended by adding at the end the following new subsection:

''(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—If, 1 year after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.''.

(q) AUTOMATED VALUATION MODELS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following new section (and amending the table of contents accordingly):

''SEC. 1125. AUTOMATED VALUATION MODELS USED TO VALUE CERTAIN MORTGAGES.

''(a) IN GENERAL.—Automated valuation models shall adhere to quality control standards designed to—

''(1) ensure a high level of confidence in the estimates produced by automated valuation models;

''(2) protect against the manipulation of data;

''(3) seek to avoid conflicts of interest; and

''(4) require random sample testing and reviews, where such testing and reviews are performed by an appraiser who is licensed or certified in the State where the testing and reviews take place.

''(b) ADOPTION OF REGULATIONS.—The Appraisal Subcommittee and its member agencies, in consultation with the Appraisal Standards Board of the Appraisal Foundation and other interested parties, shall promulgate regulations to implement the quality control standards required under this section.

''(c) ENFORCEMENT.—Compliance with regulations issued under this subsection shall be enforced by—

''(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

''(2) with respect to other persons, the Appraisal Subcommittee.

''(d) AUTOMATED VALUATION MODEL DEFINED.—For purposes of this section, the term 'automated valuation model' means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.''.

(r) BROKER PRICE OPINIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following

new section (and amending the table of contents accordingly):

''SEC. 1126. BROKER PRICE OPINIONS.

''(a) GENERAL PROHIBITION.—In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

''(b) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term 'broker price opinion' means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).''.

(s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: ''and the Federal Housing Finance Agency''; and

(2) by inserting at the end the following: ''At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.''.

(t) TECHNICAL CORRECTIONS.—

(1) Section 1119(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(2)) is amended by striking ''council,'' and inserting ''Council,''.

(2) Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking ''Corporations,'' and inserting ''Corporation,''.

(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking ''council'' and inserting ''Council''.

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking ''Federal Financial Institutions Examination Council'' and inserting ''Financial Institutions Examination Council''; and

(ii) by striking ''the council's functions'' and inserting ''the Council's functions''.

SEC. 1114. STUDY REQUIRED ON IMPROVEMENTS IN APPRAISAL PROCESS AND COMPLIANCE PROGRAMS.

(a) STUDY.—The Comptroller General shall conduct a comprehensive study on possible improvements in the appraisal process generally, and specifically on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, this study shall examine the existing exemptions to the use of certified appraisers issued by Federal financial institutions regulatory agencies. The study shall also review the threshold level established by Federal regulators for compliance under title XI and whether there is a need to revise them to reflect the addition of consumer protection to the purposes and functions of the Appraisal Subcommittee. The study shall additionally examine the quality of different types of mortgage collateral valuations produced by broker price opinions, automated valuation models, licensed appraisals, and certified appraisals, among others, and the quality of appraisals provided through different distribution channels, including appraisal management companies, independent appraisal operations within a mortgage originator, and fee-for-service appraisals. The study shall also include an analysis and statistical breakdown of enforcement actions taken during the last 10 years against different types of appraisers, including certified, licensed, supervisory, and trainee appraisers. Furthermore, the study shall examine the benefits and costs, as well as the advantages and disadvantages, of establishing a national repository to collect data related to real estate property collateral valuations performed in the United States.

(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for administrative or legislative action, at the Federal or State level, as the Comptroller General may determine to be appropriate.

(c) ADDITIONAL STUDY REQUIRED.—The Comptroller General shall conduct an additional study to determine the effects that the changes to the seller-guide appraisal requirements of Fannie Mae and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—

(1) quality and costs of appraisals;

(2) length of time for obtaining appraisals;

(3) impact on consumer protection, especially regarding maintaining appraisal independence, abating appraisal inflation, and mitigating acts of appraisal fraud;

(4) structure of the appraisal industry, especially regarding appraisal management companies, fee-for-service appraisers, and the regulation of appraisal management companies by the states; and

(5) impact on mortgage brokers and other small business professionals in the financial services industry.

(d) ADDITIONAL REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit an additional report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (c). Such additional report shall take into consideration the Small Business Administration's views on how small businesses are affected by the Home Valuation Code of Conduct.

SEC. 1115. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Subsection (e) of section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended to read as follows:

''(e) COPIES FURNISHED TO APPLICANTS.—

''(1) IN GENERAL.—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

''(2) WAIVER.—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

''(3) REIMBURSEMENT.—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

''(4) FREE COPY.—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

''(5) NOTIFICATION TO APPLICANTS.—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

''(6) REGULATIONS.—The Board shall prescribe regulations to implement this subsection within 1 year of the date of the enactment of this subsection.

''(7) VALUATION DEFINED.—For purposes of this subsection, the term 'valuation' shall include any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.''.

SEC. 1116. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.

Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:

''(c) The standard form described in subsection (a) shall include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

''(1) the fee paid directly to the appraiser by such company; and

''(2) the administration fee charged by such company.''.

SEC. 1117. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) PROMULGATION OF NEW REQUIREMENTS.—The Director shall lead a Negotiated Rulemaking Committee under the Federal Advisory Committee Act, the Negotiated Rulemaking Act, and section 1022(b) of this title to promulgate appraisal independence requirements for residential loan purposes, and such Committee shall promulgate such requirements not later than the end of the 60-day period beginning on the date of the enactment of this title.

(b) CERTAIN REGULATION REQUIREMENTS.—Regulations promulgated by the Negotiated Rulemaking Committee under this section—

(1) shall not prohibit lenders, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation from accepting any appraisal report completed by an appraiser selected, retained, or compensated in any manner by a mortgage loan originator—

(A) licensed or registered in accordance with the SAFE Mortgage Licensing Act of 2008; and

(B) subject to Federal or State laws that make it unlawful for a mortgage loan originator to make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property, except that nothing in this section shall prohibit a person with an interest in a real estate transaction from asking an appraiser to—

(i) consider additional, appropriate property information;

(ii) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) correct errors in the appraisal report; and

(2) shall include a requirement that lenders and their agents compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

(c) SUNSET.—Effective on the date the appraisal independence requirements are promulgated pursuant to subsection (a), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

SA 4008. Mr. DORGAN (for himself, Mr. LEVIN, Ms. CANTWELL, Mr. FEINGOLD, Mr. SANDERS, 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 584, line 7, after the first period insert the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

On page 808, line 8, after the first period, insert the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(d) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, 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 holders 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 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, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

SA 4009. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 893, after line 25, insert the following:

SEC. 774. STANDARDS OF CONDUCT FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

''(k) STANDARDS OF CONDUCT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title or the Investment Advisers Act of 1940, the Commission shall issue rules to provide, in substance, that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice about securities to retail customers, shall be to act in the interest of the customer, without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

''(2) EXCLUSION FOR LIMITED RANGE OF PRODUCTS OFFERED.—Paragraph (1) shall not apply with respect to any limited representative-investment company and variable contracts products, or for any other broker or dealer, as defined by the Commission, who sells only proprietary or other limited range of products.

''(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) RETAIL CUSTOMER DEFINED.—The term 'retail customer' means a natural person, or the legal representative of such natural person, who—

''(i) receives personalized investment advice about securities from a broker or dealer; and

''(ii) uses such advice primarily for personal, family, or household purposes.

''(B) LIMITED REPRESENTATIVE-INVESTMENT COMPANY AND VARIABLE CONTRACTS PRODUCTS.—The term 'limited representative-investment company and variable contracts product' shall have the meaning given such term by rule of the Commission, and includes any person that is licensed by a registered security association pursuant to section 15A—

''(i) the activities of which in the investment banking and securities business are limited to the solicitation, purchase, and sale of—

''(I) redeemable securities of companies registered pursuant to the Investment Company Act of 1940;

''(II) securities of closed-end companies registered pursuant to the Investment Company Act of 1940, during the period of original distribution only; and

''(III) variable contracts and insurance premium funding programs and other contracts issued by an insurance company, other than any contract that is an exempt security pursuant to section 3(a)(8) of the Securities Act of 1933; and

''(ii) does not function as a representative in any financial instrument that is not described in clause (i).

''(l) OTHER MATTERS.—

''(1) IN GENERAL.—The Commission shall—

''(A) facilitate the provision of clear, appropriate disclosures to customers regarding the terms of their relationships with, material conflicts of interest of, and direct and indirect compensation to, brokers, dealers, and investment advisers; and

''(B) examine and, where appropriate, promulgate rules regulating sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that the Commission deems contrary to the public interest and the interests of investors.

''(2) RULE OF CONSTRUCTION.—The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of the standard, under paragraph (1)(A), when applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

''(m) HARMONIZATION OF ENFORCEMENT AND REMEDY REGULATIONS.—The Commission shall issue regulations to ensure, to the extent practicable, that the enforcement options and remedies available for violations of the standard of conduct applicable to a broker or dealer providing investment advice to a customer are commensurate with those enforcement options and remedies available for violations of the standard of conduct applicable to investment advisers under the Investment Advisers Act of 1940.''.

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended by adding at the end the following:

''(f) STANDARDS OF CONDUCT.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title or the Securities Exchange Act of 1934, the Commission shall promulgate rules to provide that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice to retail customers, shall be to act in the best interest of the customer, without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

''(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

''(A) receives personalized investment advice about securities from a broker or dealer; and

''(B) uses such advice primarily for personal, family, or household purposes.

''(g) OTHER MATTERS.—

''(1) IN GENERAL.—The Commission shall—

''(A) facilitate the provision of clear, appropriate disclosures to customers regarding the terms of their relationships with, material conflicts of interest of, and direct and indirect compensation to, brokers, dealers, and investment advisers; and

''(B) examine and, where appropriate, promulgate rules regulating sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that the Commission deems contrary to the public interest and the interests of investors.''.

SA 4010. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1223, strike line 9 and all that follows through page 1225, line 3 and insert the following:

(a) ANNUAL ASSESSMENTS.—

(1) IN GENERAL.—The Bureau shall establish, by rule, a system of assessments to fund the operations of the Bureau. Such rules shall apply only to those covered persons having total consolidated assets of more than $50,000,000,000, and shall require annual assessments from each such covered person.

(2) FUNDING CAP.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be collected by the Bureau through assessments in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2006, of the Board of Governors, equal to—

(A) 10 percent of such expenses in fiscal year 2011;

(B) 11 percent of such expenses in fiscal year 2012; and

(C) 12 percent of such expenses in fiscal year 2013, and in each fiscal year thereafter.

(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date, which amount may not exceed 8 percent of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2006, of the Board of Governors.

SA 4011. Mr. BURRIS 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 104, line 24, insert before the period the following: '', and shall require such companies to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses''.

SA 4012. Mrs. SHAHEEN (for herself, Mr. BROWN of Massachusetts, Mr. KERRY, Mr. GREGG, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 295, between lines 19 and 20, insert the following:

(t) TREATMENT OF CERTAIN NONBANK FINANCIAL COMPANIES NOT SUBJECT TO ORDERLY LIQUIDATION.—

(1) IN GENERAL.—Subsections (n) and (o) shall not apply to any nonbank financial company that is subject to liquidation or rehabilitation under State law, unless such company—

(A) is determined to be a nonbank financial company supervised by the Board of Governors pursuant to section 113; or

(B) is determined by the Corporation to have benefitted financially from the orderly liquidation of a covered financial company and the use of the Fund under this title by receiving payments or credit pursuant to subsection (b)(4), (d)(4), or (h)(5)(E).

(2) EXCLUSION OF ASSETS.—Any assets of a nonbank financial company described in paragraph (1) shall be excluded for purposes of calculating a financial company's total consolidated assets under subsection (o).

SA 4013. 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 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 offering of a reverse mortgage.

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

(1) include requirements for—

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

(B) the purpose of providing timely, appropriate, and effective 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;

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

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, 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 of 1974 (12 U.S.C. 2601 et seq.), 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. 12 U.S.C. 1715z–20).

(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 4014. 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 ''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 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;

(C) making a determination of the suitability of a reverse mortgage for a consumer—

(i) creating a presumption of unsuitability, if—

(I) the mortgagor plans to use the funds obtained from the reverse mortgage to purchase an annuity or make an investment;

(II) the mortgagor is married and the spouse of the mortgagor is not a party to the mortgage; or

(III) a person is removed from the title to the dwelling in the process of obtaining the reverse mortgage; and

(ii) taking into consideration—

(I) whether the mortgagor intends to reside in the property on a long-term basis;

(II) 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;

(III) whether a reverse mortgage will affect the eligibility of the mortgagor to receive Government benefits;

(IV) whether the mortgagor intends to pass the residence to an heir and the ability of such heir to repay the reverse mortgage loan;

(V) 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

(VI) 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 of 1974 (12 U.S.C. 2601 et seq.), 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 person 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;

(E) an explanation of the circumstances, if any, under which the mortgagor, an heir of the mortgagor, or the estate of the mortgagor, would be liable for any amount by which the amount of the indebtedness of the mortgagor under the reverse mortgage exceeds the appraised value of the dwelling securing the mortgage upon termination of the mortgage;

(F) an explanation of the circumstances, if any, under which the spouse, heir, or estate of the mortgagor would be prevented from purchasing the dwelling securing the mortgage upon termination of the mortgage; and

(G) 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 4015. Mr. VITTER submitted an amendment intended to be proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. _____. SUSPENSION OF THE HEALTH CARE ACT.

If at the beginning of any fiscal year OMB determines that the deficit targets set forth in the CBO budget report of March 20, 2010 will not be met, the provisions of Public Law 111–148 shall be suspended for that year.

SA 4016. Mr. UDALL of Colorado (for himself, Mr. LUGAR, Mr. LAUTENBERG, Mr. BOND, Mr. BEGICH, Mr. SCHUMER, 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 1455, after line 25, insert the following:

SEC. 1077. USE OF CONSUMER REPORTS.

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by inserting after paragraph (1) the following:

''(2) provide to the consumer written or electronic disclosure—

''(A) of a numerical credit score as defined in section 609(f)(2)(A) used by such person in taking any adverse action based in whole or in part on any information in a consumer report; and

''(B) of the information set forth in subparagraphs (B) through (E) of section 609(f)(1);''; and

(C) in paragraph (4) (as so redesignated), by striking ''paragraph (2)'' and inserting ''paragraph (3)''; and

(2) in subsection (h)(5)—

(A) in subparagraph (C), by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (D), by striking the period and inserting ''; and''; and

(C) by inserting at the end the following:

''(E) include a statement informing the consumer of—

''(i) a numerical credit score as defined in section 609(f)(2)(A), used by such person in connection with the credit decision described in paragraph (1) based in whole or in part on any information in a consumer report; and

''(ii) the information set forth in subparagraphs (B) through (E) of section 609(f)(1).''.

SA 4017. Mr. ENZI (for himself and Ms. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1257, after line 25, insert the following:

(g) WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, this section shall apply to any Federal contractor, agent, or employee involved in originating, servicing, debt collection, refinancing, or other consumer related activity relating to a loan under the William D. Ford Federal Direct Loan Program under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.).

(2) DEFINITIONS.—For purposes of carrying out this title—

(A) the term ''covered person'' includes any person acting as a contractor, agent, or employee of the Federal Government in providing a loan under the William D. Ford Federal Direct Loan Program;

(B) the term ''enumerated consumer laws'' includes any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) relating to such program; and

(C) the term ''financial product or service'' includes a loan under such program.

SA 4018. 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 1290, line 4, strike ''respectively.'' insert the following: ''respectively.

(s) CONSUMER PRIVACY.—Notwithstanding any other provision of this Act, any provision of the enumerated consumer laws, or any other provision of Federal law, the Bureau may not investigate an individual transaction to which a consumer is a party without the written permission of the consumer.

SA 4019. Mr. DODD (for Mr. WYDEN (for himself, Mr. GRASSLEY, Mr. INHOFE, Mr. BENNET, Mr. UDALL of Colorado, Mr. BROWN of Ohio, Mr. MERKLEY, and Ms. COLLINS)) proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. ___. ELIMINATING SECRET SENATE HOLDS.

(a) IN GENERAL.—

(1) COVERED REQUEST.—This standing order shall apply to a notice of intent to object to the following covered requests:

(A) A unanimous consent request to proceed to a bill, resolution, joint resolution, concurrent resolution, conference report, or amendment between the Houses.

(B) A unanimous consent request to pass a bill or joint resolution or adopt a resolution, concurrent resolution, conference report, or the disposition of an amendment between the Houses.

(C) A unanimous consent request for disposition of a nomination.

(2) RECOGNITION OF NOTICE OF INTENT.—The majority and minority leaders of the Senate or their designees shall recognize a notice of intent to object to a covered request of a Senator who is a member of their caucus if the Senator—

(A) submits the notice of intent to object in writing to the appropriate leader and grants in the notice of intent to object permission for the leader or designee to object in the Senator's name; and

(B) not later than 2 session days after submitting the notice of intent to object to the appropriate leader, submits a copy of the notice of intent to object to the Congressional Record and to the Legislative Clerk for inclusion in the applicable calendar section described in subsection (b).

(3) FORM OF NOTICE.—To be recognized by the appropriate leader a Senator shall submit the following notice of intent to object:

''I, Senator _____, intend to object to _____, dated _____. I will submit a copy of this notice to the Legislative Clerk and the Congressional Record within 2 session days and I give my permission to the objecting Senator to object in my name.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date that the notice of intent to object is submitted.

(b) CALENDAR.—Upon receiving the submission under subsection (a)(2)(B), the Legislative Clerk shall add the information from the notice of intent to object to the applicable Calendar section entitled ''Notices of Intent to Object to Proceeding'' created by Public Law 110–81. Each section shall include the name of each Senator filing a notice under subsection (a)(2)(B), the measure or matter covered by the calendar to which the notice of intent to object relates, and the date the notice of intent to object was filed.

(c) REMOVAL.—A Senator may have a notice of intent to object relating to that Senator removed from a calendar to which it was added under subsection (b) by submitting for inclusion in the Congressional Record the following notice:

''I, Senator _____, do not object to _____, dated _____.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date of the submission to the Congressional Record under this subsection.

(d) OBJECTING ON BEHALF OF A MEMBER.—If a Senator who has notified his or her leader of an intent to object to a covered request fails to submit a notice of intent to object under subsection (a)(2)(B) within 2 session days following an objection to a covered request by the leader or his or her designee on that Senator's behalf, the Legislative Clerk shall list the Senator who made the objection to the covered request in the applicable ''Notice of Intent to Object to Proceeding'' calendar section.

SA 4020. Mr. CRAPO (for himself, Mr. GREGG, Mr. SHELBY, Mr. MCCAIN, Mr. VITTER, Mrs. HUTCHISON, and Mr. CORKER) 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 bill, add the following:

TITLE XIII—FANNIE MAE AND FREDDIE MAC

Subtitle A—Ending Bailouts

SEC. 1311. SHORT TITLE.

This subtitle may be cited as the ''Ending Bailouts of Fannie Mae and Freddie Mac Act''.

SEC. 1312. REESTABLISHING THE MAXIMUM AGGREGATE AMOUNT PERMITTED TO BE PROVIDED BY THE TAXPAYERS TO FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(L) REESTABLISHMENT OF TAXPAYER FUNDING CAPS.—The Agency, as conservator, shall prevent a regulated entity from requesting or receiving any funds from the United States Department of the Treasury, as part of the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United State Department of the Treasury and the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, that exceeds a maximum aggregate amount of $200,000,000,000.''.

SEC. 1313. REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity

does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such entity in accordance with generally accepted accounting principles.''.

SEC. 1314. ENSURING CONGRESSIONAL REVIEW FOR AGREEMENTS INCREASING TAXPAYER RISK.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)), as amended by sections 1203 and 1204, is further amended by adding at the end the following new subparagraph:

''(N) AGREEMENTS.—

''(i) IN GENERAL.—The Agency, as conservator or receiver, may enter into agreements that are consistent with its appointment as conservator or receiver with the regulated entity and that expire prior to, or upon, the regulated entity's emergence from conservatorship or receivership provided—

''(I) the agreement does not expose the United States taxpayers to additional risk; and

''(II) the agreement was approved by Congress pursuant to clause (ii).

''(ii) PROCEDURE FOR CONGRESSIONAL APPROVAL.—

''(I) IN GENERAL.—Notwithstanding clause (i), the Agency may enter into, on an interim basis, an agreement, even if the agreement exposes the taxpayer to additional risk, including if such agreement exceeds the limitations established under subparagraphs (L) and (M), if such an agreement—

''(aa) is deemed necessary by the Agency, based upon the Agency's duties as conservator or receiver; and

''(bb) is approved by Congress through adoption of a concurrent resolution of approval, not more than 120 days after the later of—

''(AA) the signing of the agreement; or

''(BB) the date of enactment of the Ending Bailouts of Fannie Mae and Freddie Mac Act.

''(II) REQUIRED SUBMISSIONS FOR CONGRESSIONAL REVIEW.—During the 120-day period described under subclause (I), the Director shall submit to Congress—

''(aa) the text of the agreement;

''(bb) a certification and justification of how the agreement is consistent with the Agency's duties as conservator or receiver;

''(cc) budgetary projections demonstrating the cost to the taxpayer in a 1, 5, and 10-year window;

''(dd) independent risk analysis from the Government Accountability Office of the agreement, considering the risk to the short and long-term viability of the regulated entity and the United States taxpayer;

''(ee) a time table for the expiration of the agreement;

''(ff) a list and description of assets included within each enterprises portfolio, including gross size of each enterprises portfolio and a detailed explanation of the components;

''(gg) the prices that each enterprise is paying on delinquent mortgages, and what mechanism is being applied to protect the United States taxpayer;

''(hh) a list and description of risk management practices by each enterprise to protect United States taxpayer dollars, and the differences between each enterprises practices in such regard, including whether there are any investigations into the accounting practices of either enterprise;

''(ii) a list and description of any interaction between the Department of the Treasury and the mortgage portfolio of any other Government entity and its effect on each enterprise;

''(jj) an updated disclosure of any taxpayer funds provided for and at risk to each enterprise from the Department of the Treasury; and

''(kk) an updated disclosure of the debt activity by each enterprise and the sensitivity to any interest rate changes.

''(iii) TESTIMONY REQUIRED IF FUNDING LIMITATION EXCEEDED.—The Director shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives if either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association requests amounts from the Director in excess of the limitation established under subparagraphs (L) and (M).''.

SEC. 1315. CONGRESSIONAL TESTIMONY.

The Director of the Federal Housing Finance Agency and the Secretary shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives each time that $10,000,000,000 of funds are expended pursuant to the Amended and Restated Senior Preferred Stock Purchase Agreements, dated September 26, 2008, as amended May 6, 2009. The testimony required under this section shall include the reasons why such additional expenditure of taxpayer funds is necessary.

SEC. 1316. INTERNET POSTING BY THE SECRETARY.

The Secretary shall post, on the front page of the website of the Department of the Treasury—

(1) the aggregate portfolio holdings of each enterprise; and

(2) a weekly summary of taxpayer funds provided for and at risk to each enterprise, based on any interest rate changes.

Subtitle B—Fannie Mae and Freddie Mac in the Federal Budget

SEC. 1321. ON-BUDGET STATUS OF FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Notwithstanding any other provision of law, the receipts and disbursements, including the administrative expenses, of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the Budget of the United States Government as submitted by the President;

(2) the congressional budget;

(3) the Statutory Pay-As-You-Go Act of 2010; and

(4) the Balanced Budget and Emergency Deficit Control Act of 1985 (or any successor statute).

(b) EXPIRATION.—The budgetary treatment of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements under subsection (a) shall continue with respect to such entities until such entities are no longer under Federal conservatorship or receivership as authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1322. BUDGETARY TREATMENT OF FANNIE MAE AND FREDDIE MAC.

All costs to the Government of the activities of or under the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and any functional replacements or any modification of such entities shall be determined on a fair value basis.

SEC. 1323. FANNIE MAE AND FREDDIE MAC DEBT SUBJECT TO PUBLIC DEBT LIMIT.

(a) IN GENERAL.—For purposes of section 3101(b) of chapter 31 of title 31, United States Code, the face amount of obligations issued by the Federal National Mortgage Association and by the Federal Home Loan Mortgage Corporation or any functional replacements and outstanding shall be treated as issued by the United States Government under that section.

(b) TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT.—The limit on the obligation in section 3101(b) of title 31, United States Code, shall be increased by the face amount of obligations issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and outstanding on April 15, 2010.

(c) EXPIRATION.—

(1) OBLIGATIONS.—The obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements shall continue to be treated as issued by the United States Government with respect to such entities until such entities no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

(2) DEBT LIMIT.—Any temporary increase in the public debt limit authorized in subsection (b) with respect to the obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation shall be reversed with respect to such entities when Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1324. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) FAIR VALUE.—The term ''fair value'' shall have the same meaning as the definition of fair value outlined in Financial Accounting Standards No. 157, or any successor thereto, issued by the Financial Accounting Standards Board.

(2) FUNCTIONAL REPLACEMENTS.—The term ''functional replacements'' means any organization, agreement, or other arrangement that would perform the public functions of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(3) MODIFICATION.—

(A) IN GENERAL.—The term ''modification'' means any government action that alters the estimated fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements.

(B) COST.—The cost of a modification is the difference between the current estimate of the fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements and the estimate of the fair value of such activities as modified.

SA 4021. Mr. GREGG submitted an amendment intended to be proposed to

amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 623, line 14, insert '', including price and volume,'' after ''transaction''.

On page 623, line 16, insert '', consistent with joint rules adopted by the Commission'' after ''executed''.

On page 623, line 18, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 21, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 23, strike ''is'' and insert ''and the Securities and Exchange Commission are''.

On page 623, line 24, strike ''provide by rule'' and insert ''engage in joint rulemaking to jointly adopt rules providing''.

On page 624, line 1, insert '', volume,'' after ''transaction''.

On page 624, line 8, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 15, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 623, line 23, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 624, line 23, strike ''make available to the public'' and insert ''require real time public reporting for such transactions''.

On page 625, line 1, strike '', aggregate data on such swap trading volumes and positions''.

On page 625, strike lines 3 through 7.

On page 625, line 9, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 625, line 14, strike ''rule'' and insert ''rules''.

On page 625, line 16, strike ''(i) and (ii)'' and insert ''(i) through (iii)''.

On page 625, line 17, strike ''rule'' and insert ''rules''.

On page 625, line 18, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 625, line 20, strike ''identify the participants'' and insert ''disclose the identity of any market participant or proprietary information about the swap transactions, positions, or trading strategies of any market participant''.

On page 625, line 22, strike ''large notional''.

On page 625, line 23, strike the ''(block trade)'' and insert ''block trade''.

On page 626, line 2, strike ''large notional''.

On page 626, line 3, strike the ''(block trades)'' and insert ''block trades''.

On page 626, lines 5 through 6, strike ''whether the public disclosure will materially reduce market liquidity'' and insert ''the effect public disclosure will have on measures of market quality, including market liquidity and transaction costs''.

On page 626, line 13, insert ''and the Securities and Exchange Commission'' after ''Commission''.

On page 626, after line 13 insert the following:

''(G) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to subparagraph (C) in a timely manner, at the request of either the Commission or the Securities and Exchange Commission, the Financial Stability Oversight Council shall resolve the dispute—

''(i) within a reasonable time after receiving the request;

''(ii) after consideration of relevant information provided by the Commission and the Securities and Exchange Commission; and

''(iii) by agreeing with the Commission or the Securities and Exchange Commission regarding the entirety of the matter or by determining a compromise position.''.

On page 800, line 15, insert '', including price and volume,'' after ''transaction''.

On page 800, line 18, insert '', consistent with joint rules adopted by the Commission'' after ''executed''.

On page 800, line 20, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 800, line 23, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 1, insert ''and required to engage in joint rulemaking to jointly adopt rules providing'' after ''Commission''.

On page 801, line 2, strike ''to provide by rule''.

On page 801, line 3, insert '', volume,'' after ''transaction''.

On page 801, line 10, insert '' pursuant to (a)(10)'' after ''requirements)''.

On page 801, line 10, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 17, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 24, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 800, line 25, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 801, line 25, strike ''make available to the public'' and insert ''require real time public reporting for such transactions''.

On page 802, line 3, strike '', aggregate data on such swap trading volumes and positions''.

On page 802, strike lines 6 through 11.

On page 802, line 13, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 802, line 19, strike ''rule'' and insert ''rules''.

On page 802, line 21, strike ''(i) and (ii)'' and insert ''(i) through (iii)''.

On page 802, line 22, strike ''rule'' and insert ''rules''.

On page 802, line 23, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 802, line 25, strike ''identify the participants'' and insert ''disclose the identity of any market participant or proprietary information about the security-based swap transactions, positions, or trading strategies of any market participant''.

On page 803, line 2, strike ''large notional''.

On page 803, lines 3 and 4, strike the ''(block trade)'' and insert ''block trade''.

On page 803, line 7, strike ''large notional''.

On page 803, line 8 strike the ''(block trades)'' and insert ''block trades''.

On page 803, lines 10 through 12, strike ''whether the public disclosure will materially reduce market liquidity'' and insert ''the effect public disclosure will have on measures of market quality, including market liquidity and transaction costs''.

On page 803, line 19, insert ''and the Commodity Futures Trading Commission'' after ''Commission''.

On page 803, between lines 19 and 20, insert the following:

''(G) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commission and the Commodity Futures Trading Commission fail to jointly prescribe rules pursuant to subparagraph (C) in a timely manner, at the request of either the Commission or the Commodity Futures Trading Commission, the Financial Stability Oversight Council shall resolve the dispute—

''(i) within a reasonable time after receiving the request;

''(ii) after consideration of relevant information provided by the Commission and the Commodity Futures Trading Commission; and

''(iii) by agreeing with the Commission or the Commodity Futures Trading Commission regarding the entirety of the matter or by determining a compromise position.''.

SA 4022. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 558, strike line 8 and all that follows through page 559, line 14, and insert the following:

(d) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) is amended by adding at the end the following:

''(6) The Commission, by rule, regulation, or order may conditionally or unconditionally exempt any person, swap, or transaction, or any class or classes of persons, swaps, or transactions, from any provision of this Act that was added by an amendment in the Wall Street Transparency and Accountability Act of 2010, to the extent that such exemption is necessary or appropriate in the public interest, and is not inconsistent with the purposes of such Act.''.

On page 892, strike line 23 and all that follows through page 893, line 2, and insert the following:

''(c) DERIVATIVES.—The Commission, by rule, regulation, or order may conditionally or unconditionally exempt any person, security-based swap, or transaction, or any class or classes of persons, security-based swaps, or transactions, from any provision of this Act that was added by an amendment in the Wall Street Transparency and Accountability Act of 2010, to the extent that such exemption is necessary or appropriate in the public interest, and is not inconsistent with the purposes of such Act.''.

SA 4023. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 541, strike lines 13 through 24, and insert the following:

''(D) RISK BASED CAPITAL.—In setting risk-based capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account—

''(i) the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a major swap participant;

''(ii) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(iii) whether the swap is used to offset or hedge another instrument or asset owned by such major swap participant; and

''(iv) whether the swap is cleared, in addition to any other factor the prudential regulator and the Commission deem material.''.

On page 556, strike lines 11 through 21, and insert the following:

''(C) RISK BASED CAPITAL.—In setting risk-based capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account—

''(i) the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a swap dealer;

''(ii) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(iii) whether the swap is used to offset or hedge another instrument or asset owned by such swap dealer; and

''(iv) whether the swap is cleared, in addition to any other factor the prudential regulator and the Commission deem material.''.

On page 646, strike line 6, and insert the following:

''(e) RISK-BASED CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—Each registered swap dealer and major swap participant shall meet at all times such risk-based capital and margin requirements as the appropriate Federal banking agencies, the Commission, or the Securities and Exchange Commission, as applicable, shall prescribe, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of this title.

''(2) CAPITAL AND MARGIN CONSIDERATIONS.—In determining capital and margin requirements in this subsection, the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission, respectively, shall set risk-based capital and margin requirements that such authorities deem appropriate and necessary for the risk associated with the swaps activities of each registered swap dealer and major swap participant. In setting such risk-based capital and margin requirements pursuant to the authorities established in paragraphs (3) through (10), the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission each shall consider, among other factors—

''(A) the liquidity of each swap, including whether such instrument is traded on a liquid market;

''(B) whether the swap is used to offset or hedge another instrument or asset owned by such registered swap dealers and major swap participants; and

''(C) whether the swap is cleared.''.

On page 646, line 7, strike ''(1) IN GENERAL.—'' and insert ''(3) DEPOSITORY AND NONDEPOSITORY INSTITUTIONS.—''.

On page 646, line 18, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 647, line 7, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 647, line 9, strike ''(2)'' and insert ''(4)''.

On page 648, line 5, strike ''(3)'' and insert ''(5)''.

On page 648, line 9, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 649, line 6, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 649, line 12, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 650, line 21, strike ''(4)'' and insert ''(6)''.

On page 651, line 4, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 651, line 13, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 651, line 22, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 651, line 23, strike ''(5)'' and insert ''(7)''.

On page 652, line 11, strike ''(6)'' and insert ''(8)''.

On page 653, line 5, strike ''(7)'' and insert ''(9)''.

On page 653, line 7, strike ''(4)(A)(i)'' and insert ''(6)(A)(i)''.

On page 653, line 8, strike ''(4)(A)(ii)'' and insert ''(6)(A)(ii)''.

On page 653, line 9, strike ''(4)(B)(i)'' and insert ''(6)(B)(i)''.

On page 653, line 10, strike ''(4)(B)(ii)'' and insert ''(6)(B)(ii)''.

On page 653, line 15, strike ''(8)'' and insert ''(9)''.

On page 653, line 16, strike ''(4)'' and insert ''(6)''.

On page 852, strike line 19, and insert the following:

''(e) RISK-BASED CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall meet at all times such risk-based capital and margin requirements as the appropriate Federal banking agencies, the Commission, or the Securities and Exchange Commission, as applicable, shall prescribe, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of this title.

''(2) CAPITAL AND MARGIN CONSIDERATIONS.—In determining capital and margin requirements in this subsection, the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission, respectively, shall set risk-based capital and margin requirements that such authorities deem appropriate and necessary for the risk associated with the security-based swaps activities of each registered security-based swap dealer and major security-based swap participant. In setting such risk-based capital and margin requirements pursuant to the authorities established in paragraphs (3) through (10), the appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission each shall consider, among other factors—

''(A) the liquidity of each security-based swap, including whether such instrument is traded on a liquid market;

''(B) whether the security-based swap is used to offset or hedge another instrument or asset owned by such registered security-based swap dealers and major security-based swap participants; and

''(C) whether the security-based swap is cleared.''.

On page 852, line 20, strike ''(1) IN GENERAL.—'' and insert ''(3) DEPOSITORY AND NONDEPOSITORY INSTITUTIONS.—''.

On page 853, line 8, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 853, line 22, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 854, line 1, strike ''(2)'' and insert ''(4)''.

On page 854, line 25, strike ''(3)'' and insert ''(5)''.

On page 855, line 5, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 855, line 25, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 856, line 7, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 857, line 13, strike ''(4)'' and insert ''(6)''.

On page 857, line 22, strike ''(2)(A)'' and insert ''(4)(A)''.

On page 858, line 6, strike ''(2)(B)'' and insert ''(4)(B)''.

On page 858, line 13, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 858, line 14, strike ''(5)'' and insert ''(7)''.

On page 859, line 3, strike ''(6)'' and insert ''(8)''.

On page 859, line 22, strike ''(7)'' and insert ''(9)''.

On page 859, line 24, strike ''(4)(A)'' and insert ''(6)(A)''.

On page 860, line 1, strike ''(4)(B)'' and insert ''(6)(B)''.

On page 860, line 6, strike ''(8)'' and insert ''(10)''.

On page 860, line 7, strike ''(4) and (5)'' and insert ''(6) and (7)''.

SA 4024. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 577, line 24, after ''paragraph (9)'', insert '', or to any swap transaction that is a large notional swap transaction (block trade) for the particular market or contract''.

On page 793, line 23, strike ''or''.

On page 794, line 3, strike the period and insert ''; or''.

On page 794, between lines 3 and 4, insert the following:

''(iii) , or to any security-based swap transaction that is a large notional security-based swap transaction (block trade) for the particular market or contract.''.

SA 4025. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 567, line 24, after ''shall'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 568, line 6, after ''5b(c)(2)'' insert '', taking into account the factors described in

clauses (I) through (vii) of subparagraph (4)(A)''.

On page 571, between lines 21 and 22, insert the following:

''(vi) The effect on the mitigation of systemic risk, taking into account the size of the market for the group, category, type, or class of swaps, the resources of derivatives clearing organizations available to clear the group, category, type, or class of swaps, and the existence of reasonable legal certainty in the event of the insolvency of any such derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.''.

On page 571, line 22, strike ''(vi)'' and insert ''(vii)''.

On page 572, line 1, after ''may'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 572, line 6, strike ''(vi)'' and insert ''(vii)''.

On page 577, line 8, after ''(1)'' insert ''and designated by the Commission pursuant to subparagraph (C)''.

On page 577, line 10, after ''on'' insert '', through or subject to the rules of''.

On page 577, line 13, after ''on'' insert '', through or subject to the rules of''.

On page 577, after line 24, insert the following:

''(C) COMMISSION DESIGNATIONS.—The Commission may, by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code, separately designate a particular swap or class of swaps that is subject to the clearing requirement of paragraph (1) as subject to the execution requirement of subparagraph (A) if the Commission determines that effective pre-trade price transparency does not already exist in the market, and taking into account the potential impact of such requirement on price discovery, competition, market liquidity, and costs of execution.''.

On page 783, line 22, after ''shall'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 784, line 3, after ''17A'' insert '', taking into account the factors described in clauses (i) through (vii) of subparagraph (4)(A)''.

On page 788, before line 1, insert the following:

''(vi) The effect on the mitigation of systemic risk, taking into account the size of the market for the group, category, type, or class of security-based swaps, the resources of clearing agencies available to clear the group, category, type, or class of security-based swaps, and the existence of reasonable legal certainty in the event of the insolvency of any such clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.''.

On page 788, line 1, strike ''(vi)'' and insert ''(vii)''.

On page 788, line 5, after ''may'' insert '', by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code,''.

On page 788, line 10, strike ''(vi)'' and insert ''(vii)''.

On page 793, line 8, after ''(1)'' insert ''and designated by the Commission pursuant to subparagraph (C)''.

On page 793, line 10, after ''on'' insert '', through or subject to the rules of''.

On page 793, line 13, after ''on'' insert '', through or subject to the rules of''.

On page 794, between lines 3 and 4, insert the following:

''(C) COMMISSION DESIGNATIONS.—The Commission may, by rule pursuant to the notice and comment provisions of section 553 of title 5, United States Code, separately designate a particular security-based swap or class of security-based swaps that is subject to the clearing requirement of paragraph (1) as subject to the execution requirement of subparagraph (A) if the Commission determines that effective pre-trade price transparency does not already exist in the market, and taking into account the potential impact of such requirement on price discovery, competition, market liquidity, and costs of execution.''.

SA 4026. Mr. REID 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 1309, lines 23 and 24, strike ''in State court having jurisdiction over the defendant'' and insert ''in a State court in that State''.

SA 4027. 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 1552, line 12, strike ''SELECTION OF THE PRESIDENT'' and insert ''CLASS B DIRECTORS''.

On page 1552, beginning on line 16, strike ''the President'' and all that follows through ''years'' on line 19 and insert the following: ''the Class B directors of the Federal Reserve Bank of New York shall be designated by the Board of Governors''.

On page 1552, line 21, insert ''OF NEW YORK'' after ''BANK''.

On page 1553, line 1, strike ''supervised by the Board'' and insert ''subject to enhanced supervision and prudential standards under section 115''.

On page 1553, beginning on line 2, strike ''a Federal reserve bank, and no past or'' and insert ''the Federal Reserve Bank of New York, and no''.

On page 1553, line 6, strike ''a Federal reserve bank'' and insert ''the Federal Reserve Bank of New York''.

SA 4028. 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 1552, strike line 8 and all that follows through page 1553, line 6.

SA 4029. 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 1565, after line 23, insert the following:

TITLE XIII—FINANCIAL MARKETS OVERSIGHT CONSOLIDATION AND INVESTOR PROTECTION ACT OF 2010

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Financial Markets Oversight Consolidation and Investor Protection Act of 2010''.

SEC. 1302. PURPOSES.

The purposes of this title are—

(1) to establish a single Federal regulatory body with jurisdiction over securities and derivatives, including options, futures, swaps, and related markets and instruments and including over-the-counter derivatives;

(2) to consolidate and revise the authority for setting margin requirements;

(3) to coordinate the regulation of all financial markets;

(4) to strengthen investor protections in United States financial markets; and

(5) to ensure the competitiveness of United States markets.

SEC. 1303. DEFINITIONS.

As used in this title—

(1) the term ''Chairman'' means the Chairman of the Financial Markets Commission designated under section 1312;

(2) the term ''Commission'' means the Financial Markets Commission established by section 1311 of this title;

(3) the term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(4) the term ''transfer date'' means the date designated under section 1361.

SEC. 1304. EFFECT ON CONGRESSIONAL JURISDICTION.

It is the sense of Congress that this title should not be construed to affect the jurisdiction of any committee or subcommittee of the Congress with respect to any function transferred to the Commission by this title.

Subtitle A—Establishment of Commission

SEC. 1311. ESTABLISHMENT.

There is established in the executive branch an independent agency to be known as the ''Financial Markets Commission''.

SEC. 1312. MEMBERS: APPOINTMENT; TERMS.

(a) COMPOSITION OF COMMISSION.—

(1) NUMBER OF COMMISSIONERS.—The Commission shall be composed of 5 commissioners appointed by the President, by and with the advice and consent of the Senate.

(2) CHAIRMAN.—One of the commissioners shall be designated by the President as the Chairman of the Commission, who shall be the chief executive of the Commission.

(3) QUALIFICATIONS.—Each commissioner shall be selected solely on the basis of integrity and demonstrated knowledge of the operations of the markets that are subject to the jurisdiction of the Commission.

(4) POLITICAL AFFILIATION.—Not more than 3 of the commissioners shall be members of the same political party.

(b) TERMS.—

(1) IN GENERAL.—Except as provided in this subsection, each commissioner shall be appointed for a term of 5 years.

(2) SUCCESSION.—A commissioner may continue to serve after the expiration of such term until a successor is appointed and has qualified, but may not continue to so serve beyond the expiration of the next session of Congress beginning after the expiration of such term.

(3) FIRST COMMISSIONERS.—The terms of office of the commissioners first taking office after the enactment of this title shall expire, as designated by the President at the time of their appointment—

(A) 1 at the end of 1 year;

(B) 1 at the end of 2 years;

(C) 1 at the end of 3 years;

(D) 1 at the end of 4 years; and

(E) 1 at the end of 5 years.

(4) VACANCY.—

(A) IN GENERAL.—A commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of such term; and

(B) EFFECT OF VACANCY.—A vacancy in the Commission shall not impair the right of the remaining commissioners to exercise all the powers of the Commission.

(c) CONFLICTS OF INTEREST.—

(1) IN GENERAL.—No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any market operations or transactions of a character subject to regulation by the Commission pursuant to this title.

(2) REIMBURSEMENT FOR TRAVEL.—

(A) IN GENERAL.—Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission.

(B) PAYMENTS AND REIMBURSEMENTS CREDITED.—Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission.

(C) LIMITATION ON AMOUNT.—The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) FEES.—Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide, by rule—

(1) that the fee shall be paid in a manner other than in cash; and

(2) the time period within which the fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(e) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority—

(A) for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation under section 21(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(2)); or

(B) in providing any other assistance to a foreign securities authority.

(2) TREATMENT OF FUNDS.—Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

SEC. 1313. ORGANIZATION OF COMMISSION.

(a) DIVISION OF RETAIL INVESTOR PROTECTION AND RETAIL FINANCIAL SERVICES.—

(1) IN GENERAL.—There shall be within the Commission a Division of Retail Investor Protection and Retail Financial Services.

(2) HEAD OF DIVISION.—The head of the Division of Retail Investor Protection and Retail Financial Services shall be appointed by the Chairman.

(3) SUBDIVISIONS.—There shall be within the Division of Retail Investor Protection and Retail Financial Services—

(A) a subdivision with responsibility for functions relating to investor outreach and education; and

(B) a subdivision with responsibility for functions relating to inspections and examinations.

(b) DIVISION OF TRADING.—

(1) IN GENERAL.—There shall be within the Commission a Division of Trading.

(2) HEAD OF DIVISION.—The head of the Division of Trading shall be appointed by the Chairman.

(3) SUBDIVISIONS.—There shall be within the Division of Trading—

(A) a subdivision with responsibility for functions relating to markets in physical commodities; and

(B) a subdivision with responsibility for functions relating to inspections and examinations.

(c) DIVISION OF CORPORATE DISCLOSURE.—

(1) IN GENERAL.—There shall be within the Commission a Division of Corporate Disclosure.

(2) HEAD OF DIVISION.—The head of the Division of Corporate Disclosure shall be appointed by the Chairman.

(3) SUBDIVISION.—There shall be within the Division of Corporate Disclosure a subdivision with responsibility for functions relating to accounting and auditing matters.

(d) DIVISION OF ECONOMIC ANALYSIS.—

(1) PURPOSES.—The purpose of this subsection is to enhance the ability of the Commission to use professional and objective economic analysis to inform the design and implementation of rulemaking and other actions of the Commission.

(2) DIVISION ESTABLISHED.—There shall be within the Commission a Division of Economic Analysis.

(3) SUBDIVISIONS.—There shall be within the Division of Economic Analysis—

(A) a subdivision with responsibility for functions relating to risk analysis and financial innovation; and

(B) a subdivision with responsibility for functions relating to international technical assistance.

(4) CHIEF ECONOMIST.—

(A) APPOINTMENT.—The Division shall be headed by a Chief Economist, appointed by the Chairman of the Commission, subject to approval of a vote of at least a majority of the members of the Commission then in office, such majority to include at least 1 member of the Commission who is not a member of the same political party as the Chairman, if any such member is then in office.

(B) CRITERIA.—The Chief Economist—

(i) shall be an experienced economist of distinction, with a doctorate in economics or the equivalent in education and experience;

(ii) shall report to and be under the general supervision of the Chairman; and

(iii) shall not report to, or be subject to supervision by, any other officer or employee of the Commission.

(C) REMOVAL.—The Chairman of the Commission may remove the Chief Economist from office. The Chairman shall communicate in writing to both Houses of Congress the reasons for any such removal, not later than 30 days before the effective date of such removal.

(5) REPORTS.—

(A) IN GENERAL.—Except as provided in subparagraph (D), whenever using its authority under any provision of law, the Commission publishes a release giving notice of a proposed rulemaking or other proposed action by the Commission, and affords interested persons an opportunity to comment on such proposed rulemaking or other action or publishes a release adopting a final rule or otherwise taking action after such publication and opportunity to comment, such release shall include as a part thereof a report by the Division.

(B) CONTENT.—Each report required by subparagraph (A)—

(i) shall set forth in reasonable detail an economic analysis of the consequences of the Commission action that is the subject of the report, in light of the statutory responsibilities of the Commission and the stated purposes of the Commission for the action, including when the responsibilities of the Commission so require, the effects of the action on efficiency, competition, and capital formation;

(ii) shall refer to any peer-reviewed or other relevant literature, including any study undertaken by the staff of the Commission, that provides support for the analysis contained in the report (except that the Division is not required to undertake original research in the preparation thereof);

(iii) shall describe the extent to which the conclusions of the report remain subject to uncertainty; and

(iv) with respect to a report delivered in connection with a proposed rulemaking or other proposed action, may request information or comment from the public.

(C) FORM AND OVERSIGHT.—Each report required by subparagraph (A)—

(i) shall be prepared under the direction of, and expressly approved by and published over the name of, the Chief Economist;

(ii) shall not be subject to approval by the Chairman of the Commission or the Commission;

(iii) shall be in final form, dated not later than 1 week prior to the vote of the Commission (or the circulation of a seriatim or other means of Commission action) to which the report relates, to ensure adequate opportunity for the Commission to consider its contents prior to such action;

(iv) shall include a statement confirming that the Chairman of the Commission informed the Division, not later than 60 days prior to the date of the report, of all material aspects of the proposed action covered by the report, in sufficient detail for the purposes of the report or, if a lesser time was afforded, that such lesser time was reasonably sufficient for the preparation of the report; and

(v) shall include a statement confirming that the Division was afforded reasonably sufficient resources for the preparation of the report, or describing any lack thereof.

(D) EXCEPTION.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), no report shall be required under this paragraph—

(I) if the subject Commission action does not propose or adopt a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, unless at least 2 members of the Commission (or 1 member, if 5 members of the Commission are not then in office) request a report; or

(II) at the time of issuance of an interim final rulemaking or other emergency action by the Commission, provided that a report regarding such rulemaking or action is published not later than 60 days thereafter.

(ii) PROCEDURE.—The Commission may adopt rules of procedure governing the time and manner by which requests described in clause (i)(I) shall be made by members of the Commission.

(e) DIVISION OF ENFORCEMENT.—

(1) IN GENERAL.—There shall be within the Commission a Division of Enforcement.

(2) HEAD OF DIVISION.—The head of the Division of Enforcement shall be appointed by the Chairman.

(3) SUBDIVISION.—There shall be within the Division of Enforcement a subdivision with responsibility for functions relating to international enforcement assistance.

SEC. 1314. OFFICE OF THE CHAIRMAN.

(a) OFFICE ESTABLISHED.—There shall be in the Commission an Office of the Chairman, which shall manage the resources and operations of the Commission.

(b) OFFICE OF THE EXECUTIVE DIRECTOR.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of the Executive Director.

(2) EXECUTIVE DIRECTOR AND DUTIES OF THE EXECUTIVE DIRECTOR.—The head of the Office of the Executive Director shall be the Executive Director, who shall oversee the compliance of the Commission with Federal law, including requirements imposed by the Director of Office of Management and Budget, the Government Accountability Office, and the Office of Personnel Management.

(c) OFFICE OF THE SECRETARY.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of the Secretary.

(2) SECRETARY AND DUTIES OF THE SECRETARY.—The head of the Office of the Secretary shall be the Secretary, who shall—

(A) be appointed by the Chairman; and

(B) oversee the procedural administration of meetings, rulemaking, practice, and procedure of the Commission.

(d) OFFICE OF EXTERNAL AFFAIRS.—

(1) IN GENERAL.—There shall be within the Office of the Chairman an Office of External Affairs.

(2) DIRECTOR OF EXTERNAL AFFAIRS.—The head of the Office of External Affairs shall be the Director of External Affairs, who shall—

(A) be appointed by the Chairman;

(B) serve as the formal liaison of the Commission with the Congress, the executive branch, State and local governments, and foreign governments and regulators; and

(C) coordinate the international regulatory policy initiatives of the Commission with the Secretary of the Treasury.

SEC. 1315. GENERAL COUNSEL.

(a) OFFICE ESTABLISHED.—There shall be in the Commission an Office of General Counsel.

(b) GENERAL COUNSEL.—

(1) IN GENERAL.—The head of the Office of the General Counsel shall be the General Counsel, who shall be appointed by the Chairman.

(2) DUTIES OF THE GENERAL COUNSEL.—The General Counsel shall—

(A) report directly to the Commission;

(B) serve as the legal advisor of the Commission;

(C) represent the Commission in all disciplinary proceedings pending before the Commission;

(D) represent the Commission in courts of law whenever appropriate;

(E) assist the Department of Justice in litigation concerning the Commission; and

(F) perform such other legal duties and functions as the Commission may direct.

(3) ADDITIONAL COUNSEL.—The Commission shall appoint such other attorneys as the Commission determines are necessary to assist the General Counsel in carrying out the duties under this section.

SEC. 1316. OMBUDSMAN.

(a) OFFICE ESTABLISHED.—There shall be in the Commission the Office of the Ombudsman.

(b) OMBUDSMAN.—The head of the Office of the Ombudsman shall be the Ombudsman, who shall—

(1) be appointed by the Chairman;

(2) assist registrants, those seeking to be registered, and regulated entities in resolving problems with the Commission;

(3) identify areas in which registrants, those seeking to be registered, and regulated entities have problems in dealings with the Commission;

(4) to the extent possible, propose changes in the administrative practices of the Commission to mitigate problems identified under paragraph (3); and

(5) identify potential legislative changes that may be appropriate to mitigate problems identified under paragraph (3).

SEC. 1317. INSPECTOR GENERAL.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting ''the Financial Markets Commission,'' after ''the Federal Trade Commission,''.

Subtitle B—Transfers of Functions

SEC. 1321. TRANSFER OF FUNCTIONS.

(a) COMMODITY FUTURES TRADING COMMISSION.—All functions of the Commodity Futures Trading Commission and of any officer or component of the Commodity Futures Trading Commission are transferred to the Commission.

(b) SECURITIES AND EXCHANGE COMMISSION.—All functions of the Securities and Exchange Commission and of any officer or component of the Securities and Exchange Commission are transferred to the Commission.

SEC. 1322. ABOLISHMENT.

(a) COMMODITY FUTURES TRADING COMMISSION ABOLISHED.—Effective on [the transfer date], the Commodity Futures Trading Commission is abolished.

(b) SECURITIES AND EXCHANGE COMMISSION ABOLISHED.—Effective on [the transfer date], the Securities and Exchange Commission.

SEC. 1323. JURISDICTION OF MARGIN AUTHORITY.

(a) MARGIN AUTHORITY WITH RESPECT TO SECURITIES.—There are transferred to the Commission the functions of the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g).

(b) CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 3(a)(15) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(15)) is amended by striking ''Securities and Exchange Commission established by section 4 of this title'' and inserting ''Financial Markets Commission''.

(2) MARGIN REQUIREMENTS.—Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended—

(A) in subsection (a), by striking ''the Board of Governors of the Federal Reserve System shall, prior to the effective date of this section and from time to time thereafter,'' and inserting ''the Commission shall'';

(B) in subsection (b)—

(i) by striking ''the Board of Governors of the Federal Reserve System'' and inserting ''the Commission''; and

(ii) in subsection (b), by striking ''(1) prescribe'' and all that follows through ''and (2)'';

(C) in subsection (c)—

(i) in paragraph (1)(A), by striking ''the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board')'' and inserting ''the Commission'';

(ii) in paragraph (2)—

(I) by striking subparagraph (A) and inserting the following:

''(A) COMPLIANCE WITH MARGIN RULES.—It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures product unless such activities comply with the regulations which the Commission shall prescribe pursuant to subparagraph (B).''; and

(II) in subparagraph (B)—

(aa) by striking ''The Board'' and all that follows through ''jointly deem appropriate'' and inserting ''The Commission shall prescribe such regulations to establish margin requirements, including the establishment of levels of margin (initial and maintenance) for security futures products under such terms, and at such levels, as the Commission deems appropriate'';

(bb) by striking clause (ii); and

(cc) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively; and

(iii) by striking ''the Board'' each place that term appears and inserting ''the Commission'';

(D) in subsection (d)—

(i) in paragraph (3), in the paragraph header, by striking ''BOARD'' and inserting ''COMMISSION''; and

(ii) by striking ''the Board'' each place that term appears and inserting ''the Commission'';

(E) in subsection (e), by striking ''on or before July 1, 1937'' and all that follows through ''Federal Reserve Board'' and inserting ''on or before October 1, 2011, except to the extent that the Commission'';

(F) in subsection (f)(3), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Commission''; and

(G) in subsection (g), by striking ''Board of Governors of the Federal Reserve System'' each place that term appears and inserting ''Commission''.

(c) MARGIN AUTHORITY WITH RESPECT TO FUTURES.—The Commission may, as necessary to ensure the financial integrity of the contract markets—

(1) by order, direct a contract market to adjust the level of margin required on any contract; or

(2) by regulation, prescribe limits on the level of margin that a contract market may require on any class or category of contract.

(d) MARGIN AUTHORITY WITH RESPECT TO SWAPS.—The Commission may prescribe limits on the level of margin on non-cleared swaps—

(1) in accordance with section 15F(e) of the Securities Exchange Act of 1934, as added by the Wall Street Transparency and Accountability Act of 2010, for security-based swaps; and

(2) in accordance with section 4s(e) of the Commodity Exchange Act, as amended in the Wall Street Transparency and Accountability Act of 2010, for commodity-based swaps.

Subtitle C—Administrative Provisions

PART I—PERSONNEL PROVISIONS

SEC. 1331. OFFICERS AND EMPLOYEES.

(a) APPOINTMENT AND COMPENSATION.—The Commission may appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Commission, in accordance with title 5, United States Code.

(b) LIMITED-TERM APPOINTEES.—Notwithstanding any other provision of law, the Director of the Office of Personnel Management shall establish positions within the Senior Executive Service for 10 limited-term appointees. The Commission shall appoint individuals to such positions as provided by section 3394 of title 5, United States Code. Such positions shall expire upon the later of 3 years after the transfer date or 3 years after the initial appointment to each position. Positions in effect under this subsection shall be taken into account in applying the limitations on positions prescribed under section 3134(e) and section 5108 of title 5, United States Code.

SEC. 1332. EXPERTS AND CONSULTANTS.

The Commission may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, and may compensate such experts and consultants at rates not to exceed the daily rate prescribed for SK–18 of the Special Rate Schedule under section 5332 of such title.

PART II—GENERAL ADMINISTRATIVE PROVISIONS

SEC. 1333. GENERAL AUTHORITY.

In carrying out any function transferred by this title, the Commission, or any officer or employee of the Commission, may exercise any authority available by law (including appropriation Acts) with respect to such function to the official or agency from which such function is transferred, and the actions of the Commission in exercising such authority shall have the same force and effect as when exercised by such official or agency.

SEC. 1334. DELEGATION.

(a) IN GENERAL.—Except as otherwise provided in this title, the Commission may delegate any function to such officers and employees of the Commission as the Commission may designate, and may authorize such successive redelegations of such functions within the Commission as may be necessary or appropriate.

(b) AUTOMATIC SUNSET OF DELEGATIONS.—Each delegation of function shall automatically expire 3 years after the effective date of the delegation, unless renewed by the Commission.

(c) EXISTING DELEGATIONS.—Each delegation of function in effect on the date of enactment of this Act shall automatically expire 3 years after the date of enactment of this Act, unless renewed by the Commission.

(d) COMMISSION RESPONSIBILITY FOR ADMINISTRATION OF DELEGATED FUNCTIONS.—No delegation of functions by the Commission under this section or under any other provision of this title shall relieve the Commission of responsibility for the administration of such functions.

SEC. 1335. RULES.

(a) IN GENERAL.—The Commission may prescribe such rules, regulations, and orders as the Commission determines necessary or appropriate to administer and manage the functions of the Commission.

(b) COMPREHENSIVE REVIEW OF MAJOR RULES.—The Commission shall conduct a comprehensive review of each major rule (as that term is defined in section 804(2) of title 5, United States Code) issued by the Commission not later than 5 years after the effective date of the major rule, and every 5 years thereafter. The comprehensive review shall include a public comment period.

(c) STATUS REVIEW OF MINOR RULES.—The Commission shall conduct a status review for each rule of the Commission that is not a major rule (as that term is defined in section 804(2) of title 5, United States Code) not later than 5 years after the effective date of the rule, and every 5 years thereafter, to determine whether such rule should be designated as a major rule.

(d) REPORT ON EXISTING RULES.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a report containing a schedule for the review in accordance with this section of rules in effect on the date of enactment of this Act.

SEC. 1336. CONTRACTS.

(a) IN GENERAL.—Subject to the provisions of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Commission may—

(1) make, enter into, and perform such contracts, grants, leases, cooperative agreements, or other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons; and

(2) make such payments, by advance or reimbursement, as the Commission may determine necessary or appropriate to carry out functions of the Commission.

(b) APPROPRIATIONS REQUIRED.—Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance under appropriation Acts.

SEC. 1337. REGIONAL AND FIELD OFFICES.

The Commission may establish, alter, discontinue, or maintain such regional or other field offices of the Commission as the Commission determines necessary or appropriate to perform functions of the Commission.

SEC. 1338. USE OF FACILITIES.

(a) USE BY COMMISSION.—The Commission may, with or without reimbursement and with the consent of the entity concerned, use the research, equipment, services, or facilities of any agency or instrumentality of the United States, of any State or political subdivision thereof, or of any foreign government, in carrying out any function of the Commission.

(b) USE BY OTHERS.—

(1) IN GENERAL.—Except as provided in paragraph (4), the Commission may permit public and private agencies, corporations, associations, organizations, or individuals to use any real property, or any facilities, structures, or other improvements thereon, under the custody and control of the Commission for the purposes of the Commission.

(2) TERMS AND RATES.—The Commission shall permit the use of such property, facilities, structures, or improvements under this subsection under such terms and rates and for such period as may be in the public interest, except that the periods of such uses may not exceed 5 years.

(3) RECONDITIONING AND MAINTENANCE.—The Commission may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements used by such permittees under this subsection to a standard satisfactory to the Commission.

(4) EXCEPTION.—This subsection shall not apply to excess property, as that term is defined in section 102 of title 40, United States Code.

(c) PROCEEDS FROM REIMBURSEMENTS.—Proceeds from reimbursements under this section may be credited to the appropriation of funds that bear or will bear all or part of the cost of such equipment or facilities provided or to refund excess sums when necessary.

(d) TITLE TO PROPERTY.—Any interest in real property acquired pursuant to this title shall be acquired in the name of the United States Government.

SEC. 1339. FUNDS TRANSFER.

The Commission may, when authorized in an appropriation Act in any fiscal year, transfer funds from 1 appropriation to another within the Commission, except that no appropriation for any fiscal year shall be either increased or decreased pursuant to this section by more than 5 percent and no such transfer shall result in increasing any such appropriation above the amount authorized to be appropriated therefor.

SEC. 1340. SEAL OF COMMISSION.

The Commission shall cause a seal of office to be made for the Commission of such design as the Commission shall approve. Judicial notice shall be taken of such seal.

SEC. 1341. ANNUAL REPORT.

(a) REPORT REQUIRED.—The Commission shall, as soon as practicable after the close of each fiscal year, make a single, comprehensive report to the President for transmission to the Congress on the activities of the Commission during such fiscal year.

(b) CONTENTS.—Each report under subsection (a) shall include—

(1) a statement of goals, priorities, and plans of the Commission;

(2) an assessment of the progress made by the Commission toward—

(A) the attainment of the goals, priorities, and plans of the Commission; and

(B) the more effective and efficient management of the Commission and the coordination of its functions;

(3) recommendations, if any, for proposed legislation for the achievement of the goals, priorities, and plans of the Commission; and

(4) an estimate of—

(A) the number of the non-Federal personnel employed pursuant to contracts entered into by the Commission under section 1336 or under any other authority (including any subcontract thereunder);

(B) the number of such contracts and subcontracts pursuant to which non-Federal personnel are employed; and

(C) the total cost of such contracts and subcontracts.

Subtitle D—Transitional, Savings, and Conforming Provisions

SEC. 1351. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) TRANSFER OF EMPLOYEES.—All employees of the Securities and Exchange Commission and the Commodity Futures Trading Commission shall be transferred to the Commission.

(2) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Securities and Exchange Commission and the Commodity Futures Trading Commission under Federal law that relates to the functions transferred under section 1321, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Chairman.

(B) DECLINING TRANSFERS ALLOWED.—The Chairman 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.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the 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.

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees under this title shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS ACT.—If any provision of this title conflicts with any protection provided to a transferred employee under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) STATUS AND ELIGIBILITY OF EMPLOYEES.—The transfer of functions and employees under this title, and the abolishment of the Securities and Exchange Commission and the Commodity Futures Trading Commission under section 1322, 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 shall be placed in a position at the Commission 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 Commission 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 in the Commission, if the examiner carries out examinations of the same type of institutions as an employee of the Commission as the examiner carried 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 Chairman 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 title, 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 2-year period immediately preceding the date on which the employee was transferred.

(2) EXCEPTIONS.—The Chairman 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 the Commission.

(4) PAY INCREASES PERMITTED.—Nothing in this subsection shall limit the authority of the Chairman 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 Commission.

(ii) EMPLOYER'S CONTRIBUTION.—The Chairman 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 transferred, 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 Chairman 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 Chairman determines that the Commission will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee transferred, a transferred employee who is a member of the program may, before the decision of the Chairman 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 Chairman determines that the Commission 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 of the Chairman 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 Chairman 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 Chairman under this section.

(iii) FUNDS TRANSFER.—The Chairman 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 Chairman 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 Act on the day before the transfer date shall be eligible for coverage by a life insurance plan under section 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Chairman, 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 clause shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Chairman 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 Chairman shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Chairman and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by 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, the Chairman 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) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the transfer date, the Chairman shall implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Chairman—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other transferred employee on the basis of prior employment by the Securities and Exchange Commission or the Commodity Futures Trading Commission; 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.

SEC. 1352. 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) IN GENERAL.—Not later than 90 days after the transfer date, all property of the Securities and Exchange Commission and the Commodity Futures Trading Commission shall be transferred to the Commission.

(c) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Commission by this section shall be transferred to the Commission together with the property.

(d) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

SEC. 1353. SAVINGS PROVISIONS.

(a) SECURITIES AND EXCHANGE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1321(a) and 1322 shall not affect the validity of any right, duty, or obligation of the United States, the Commissioners of the Securities and Exchange Commission, the Securities and Exchange Commission, 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 Commissioners of the Securities and Exchange Commission or the Securities and Exchange Commission before the transfer date, except that the Chairman or the Commission shall be substituted for the Commissioners or the Securities and Exchange Commission, as the case may be, as a party to any such action or proceeding as of the transfer date.

(b) COMMODITY FUTURES TRADING COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1321(b) and 1322 shall not affect the validity of any right, duty, or obligation of the United States, the Commissioners of the Commodity Futures Trading Commission, the Commodity Futures Trading Commission, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any action or proceeding commenced by or against the Commissioners of the Commodity Futures Trading Commission or the Commodity Futures Trading Commission before the transfer date, except that the Chairman or the Commission shall be substituted for the Commissioners of the Commodity Futures Trading Commission or the Commodity Futures Trading Commission, as the case may be, as a party to the action or proceeding as of the transfer date.

(c) CONTINUATION OF EXISTING ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—

(1) SECURITIES AND EXCHANGE COMMISSION.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the Securities and Exchange Commission, or by a court of competent jurisdiction, that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against the Commission until modified, terminated, set aside, or superseded in accordance with applicable law by the Commission, by any court of competent jurisdiction, or by operation of law.

(2) COMMODITY FUTURES TRADING COMMISSION.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Commodity Futures Trading Commission, or by a court of competent jurisdiction, that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against the Commission until modified, terminated, set aside, or superseded in accordance with applicable law by the Commission, by any court of competent jurisdiction, or by operation of law.

(d) IDENTIFICATION OF REGULATIONS CONTINUED.—Not later than the transfer date, the Chairman shall—

(1) in consultation with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission, identify the regulations continued under subsection (c) that will be enforced by the Commission; and

(2) publish a list of such regulations in the Federal Register.

(e) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Securities and Exchange Commission or the Commodity Futures Trading Commission which that agency, in performing functions transferred by this title, 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 Commission.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Securities and Exchange Commission or the Commodity Futures Trading Commission which that agency, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Commission according to the terms of the regulation.

SEC. 1354. SEVERABILITY.

If any provision of this title or the application thereof to any person or circumstance is held invalid, neither the remainder of this title nor the application of such provision to other persons or circumstances shall be affected thereby.

SEC. 1355. REFERENCES IN FEDERAL LAW.

On and after the transfer date of this title, any reference in any other Federal law to any function of any department, commission, or agency, or any officer or office that is transferred under this title shall be deemed to be a reference to the Commission, or the official or component of the Commission to which this title transfers such functions.

SEC. 1356. AMENDMENTS.

(a) EXECUTIVE SCHEDULE SALARIES.—

(1) CHAIRMAN.—Section 5314 of title 5, United States Code, is amended—

(A) by striking the item relating to ''Chairman, Securities and Exchange Commission.'' and inserting the following:

''Chairman, Financial Markets Commission.''; and

(B) by striking the item relating to ''Chairman, Commodity Futures Trading Commission.''.

(2) MEMBERS.—Section 5315 of title 5, United States Code, is amended—

(A) by striking the item relating to ''Members, Securities and Exchange Commission'' and inserting the following:

''Members, Financial Markets Commission''; and

(B) by striking the item relating to ''Members, Commodity Futures Trading Commission.''.

(b) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT.—Sections 4 and 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78d and 78kk) are repealed.

(2) COMMODITY EXCHANGE ACT.—Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking paragraphs (2), (3), and (4).

SEC. 1357. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY.

(a) INTERIM AUTHORITY OF CHAIRMAN.—During the period beginning on the date on which the first Chairman is appointed under section 1312 and ending on the transfer date, the Chairman shall—

(1) consult and cooperate with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission to facilitate the orderly transfer of functions to the Commission;

(2) determine, from time to time—

(A) the amount of funds necessary to pay the expenses of the Commission (including expenses for personnel, property, and administrative services);

(B) which personnel are appropriate to facilitate the orderly transfer of functions under this title; and

(C) what property and administrative services are necessary to support the Commission; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

(b) INTERIM RESPONSIBILITIES.—Before the transfer date, upon the request of the Chairman, the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission shall each—

(1) pay to the Chairman, from funds appropriated to such agencies, such funds as the Chairman determines to be necessary under subsection (a)(2)(A);

(2) detail to the Commission such personnel as the Chairman determines to be appropriate under subsection (a)(2)(B); and

(3) make available to the Commission such property and provide to the Commission such administrative services as the Chairman determines to be necessary under subsection (a)(2)(C).

(c) NOTICE REQUIRED.—The Chairman shall give to the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission reasonable notice of any request that the Chairman intends to make under subsection (b).

Subtitle E—Transfer Date

SEC. 1361. TRANSFER DATE.

(a) TRANSFER DATE.—Except as provided in subsection (b), the term ''transfer date'' means the date that is 1 year after the date of enactment of this title.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The President may designate a transfer date that is not later than 18 months after the date of enactment of this Act, if the President transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 1 year after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(2) PUBLICATION OF NOTICE.—Not later than 180 days after the date of enactment of this Act, the President shall publish in the Federal Register notice of any date designated under paragraph (1).

SA 4030. Mr. CRAPO submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 965 and insert the following:

SEC. 965. ORGANIZATION OF COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 4D, as added by section 996 of this Act, the following:

''SEC. 4E. ORGANIZATION OF THE COMMISSION.

''(a) DIVISION OF RETAIL INVESTOR PROTECTION AND RETAIL FINANCIAL SERVICES.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Retail Investor Protection and Retail Financial Services.

''(2) HEAD OF DIVISION.—The head of the Division of Retail Investor Protection and Retail Financial Services shall be appointed by the Chairman.

''(3) SUBDIVISIONS.—There shall be within the Division of Retail Investor Protection and Retail Financial Services—

''(A) a subdivision with responsibility for functions relating to investor outreach and education; and

''(B) a subdivision with responsibility for functions relating to inspections and examinations.

''(b) DIVISION OF TRADING.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Trading.

''(2) HEAD OF DIVISION.—The head of the Division of Trading shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Trading a subdivision with responsibility for functions relating to inspections and examinations.

''(c) DIVISION OF CORPORATE DISCLOSURE.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Corporate Disclosure.

''(2) HEAD OF DIVISION.—The head of the Division of Corporate Disclosure shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Corporate Disclosure a subdivision with responsibility for functions relating to accounting and auditing matters.

''(d) DIVISION OF ECONOMIC ANALYSIS.—

''(1) PURPOSES.—The purpose of this subsection is to enhance the ability of the Commission to use professional and objective economic analysis to inform the design and implementation of rulemaking and other actions of the Commission.

''(2) DIVISION ESTABLISHED.—There shall be within the Commission a Division of Economic Analysis.

''(3) SUBDIVISIONS.—There shall be within the Division of Economic Analysis—

''(A) a subdivision with responsibility for functions relating to risk analysis and financial innovation; and

''(B) a subdivision with responsibility for functions relating to international technical assistance.

''(4) CHIEF ECONOMIST.—

''(A) APPOINTMENT.—The Division shall be headed by a Chief Economist, appointed by the Chairman of the Commission, subject to approval of a vote of at least a majority of the members of the Commission then in office, such majority to include at least 1 member of the Commission who is not a member of the same political party as the Chairman, if any such member is then in office.

''(B) CRITERIA.—The Chief Economist—

''(i) shall be an experienced economist of distinction, with a doctorate in economics or the equivalent in education and experience;

''(ii) shall report to and be under the general supervision of the Chairman; and

''(iii) shall not report to, or be subject to supervision by, any other officer or employee of the Commission.

''(C) REMOVAL.—The Chairman of the Commission may remove the Chief Economist from office. The Chairman shall communicate in writing to both Houses of Congress the reasons for any such removal, not later than 30 days before the effective date of such removal.

''(5) REPORTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), whenever using its authority under any provision of law, the Commission publishes a release giving notice of a proposed rulemaking or other proposed action by the Commission, and affords interested persons an opportunity to comment on such proposed rulemaking or other action or publishes a release adopting a final rule or otherwise taking action after such publication and opportunity to comment, such release shall include as a part thereof a report by the Division.

''(B) CONTENT.—Each report required by subparagraph (A)—

''(i) shall set forth in reasonable detail an economic analysis of the consequences of the Commission action that is the subject of the report, in light of the statutory responsibilities of the Commission and the stated purposes of the Commission for the action, including when the responsibilities of the Commission so require, the effects of the action on efficiency, competition, and capital formation;

''(ii) shall refer to any peer-reviewed or other relevant literature, including any study undertaken by the staff of the Commission, that provides support for the analysis contained in the report (except that the Division is not required to undertake original research in the preparation thereof);

''(iii) shall describe the extent to which the conclusions of the report remain subject to uncertainty; and

''(iv) with respect to a report delivered in connection with a proposed rulemaking or other proposed action, may request information or comment from the public.

''(C) FORM AND OVERSIGHT.—Each report required by subparagraph (A)—

''(i) shall be prepared under the direction of, and expressly approved by and published over the name of, the Chief Economist;

''(ii) shall not be subject to approval by the Chairman of the Commission or the Commission;

''(iii) shall be in final form, dated not later than 1 week prior to the vote of the Commission (or the circulation of a seriatim or other means of Commission action) to which the report relates, to ensure adequate opportunity for the Commission to consider its contents prior to such action;

''(iv) shall include a statement confirming that the Chairman of the Commission informed the Division, not later than 60 days prior to the date of the report, of all material aspects of the proposed action covered by the report, in sufficient detail for the purposes of the report or, if a lesser time was afforded, that such lesser time was reasonably sufficient for the preparation of the report; and

''(v) shall include a statement confirming that the Division was afforded reasonably sufficient resources for the preparation of the report, or describing any lack thereof.

''(D) EXCEPTION.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), no report shall be required under this paragraph—

''(I) if the subject Commission action does not propose or adopt a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, unless at least 2 members of the Commission (or 1 member, if 5 members of the Commission are not then in office) request a report; or

''(II) at the time of issuance of an interim final rulemaking or other emergency action by the Commission, provided that a report regarding such rulemaking or action is published not later than 60 days thereafter.

''(ii) PROCEDURE.—The Commission may adopt rules of procedure governing the time and manner by which requests described in clause (i)(I) shall be made by members of the Commission.

''(e) DIVISION OF ENFORCEMENT.—

''(1) IN GENERAL.—There shall be within the Commission a Division of Enforcement.

''(2) HEAD OF DIVISION.—The head of the Division of Enforcement shall be appointed by the Chairman.

''(3) SUBDIVISION.—There shall be within the Division of Enforcement a subdivision with responsibility for functions relating to international enforcement assistance.''.

SA 4031. 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 1258, strike line 24 and all that follows through page 1267, line 12 and insert the following:

(B) obtaining information about the activities subject to such law and the associated compliance systems or procedures of such persons; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) COORDINATION.—To minimize regulatory burden, the Bureau and the prudential regulators shall coordinate their supervisory activities for persons described in subsection (a), in a manner that—

(A) avoids duplication;

(B) shares information relevant to the supervision of the depository institution or affiliate by each agency; and

(C) ensures that the depository institution or affiliate is not subject to conflicting supervisory demands by the agencies.

(3) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate supervisory activities in a manner consistent with paragraph (2).

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, as permitted by the subject provision of Federal law.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SA 4032. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3823 proposed by Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 2 of the amendment, strike line 21 and insert the following:

Act.

TITLE XIII—IMPORTATION OF PRESCRIPTION DRUGS

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Pharmaceutical Market Access and Drug Safety Act of 2010''.

SEC. 1302. FINDINGS.

Congress finds that—

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries;

(2) the United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world;

(3) a prescription drug is neither safe nor effective to an individual who cannot afford it;

(4) allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy;

(5) American spend more than $200,000,000,000 on prescription drugs every year;

(6) the Congressional Budget Office has found that the cost of prescription drugs are between 35 to 55 percent less in other highly-developed countries than in the United States; and

(7) promoting competitive market pricing would both contribute to health care savings and allow greater access to therapy, improving health and saving lives.

SEC. 1303. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.

Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804.

SEC. 1304. IMPORTATION OF PRESCRIPTION DRUGS; WAIVER OF CERTAIN IMPORT RESTRICTIONS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 1303, is further amended by inserting after section 803 the following:

''SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.

''(a) IMPORTATION OF PRESCRIPTION DRUGS.—

''(1) IN GENERAL.—In the case of qualifying drugs imported or offered for import into the United States from registered exporters or by registered importers—

''(A) the limitation on importation that is established in section 801(d)(1) is waived; and

''(B) the standards referred to in section 801(a) regarding admission of the drugs are subject to subsection (g) of this section (including with respect to qualifying drugs to which section 801(d)(1) does not apply).

''(2) IMPORTERS.—A qualifying drug may not be imported under paragraph (1) unless—

''(A) the drug is imported by a pharmacy, group of pharmacies, or a wholesaler that is a registered importer; or

''(B) the drug is imported by an individual for personal use or for the use of a family member of the individual (not for resale) from a registered exporter.

''(3) RULE OF CONSTRUCTION.—This section shall apply only with respect to a drug that is imported or offered for import into the United States—

''(A) by a registered importer; or

''(B) from a registered exporter to an individual.

''(4) DEFINITIONS.—

''(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—For purposes of this section:

''(i) The term 'registered exporter' means an exporter for which a registration under subsection (b) has been approved and is in effect.

''(ii) The term 'registered importer' means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

''(iii) The term 'registration condition' means a condition that must exist for a registration under subsection (b) to be approved.

''(B) QUALIFYING DRUG.—For purposes of this section, the term 'qualifying drug' means a drug for which there is a corresponding U.S. label drug.

''(C) U.S. LABEL DRUG.—For purposes of this section, the term 'U.S. label drug' means a prescription drug that—

''(i) with respect to a qualifying drug, has the same active ingredient or ingredients, route of administration, dosage form, and strength as the qualifying drug;

''(ii) with respect to the qualifying drug, is manufactured by or for the person that manufactures the qualifying drug;

''(iii) is approved under section 505(c); and

''(iv) is not—

''(I) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

''(II) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262), including—

''(aa) a therapeutic DNA plasmid product;

''(bb) a therapeutic synthetic peptide product;

''(cc) a monoclonal antibody product for in vivo use; and

''(dd) a therapeutic recombinant DNA-derived product;

''(III) an infused drug, including a peritoneal dialysis solution;

''(IV) an injected drug;

''(V) a drug that is inhaled during surgery;

''(VI) a drug that is the listed drug referred to in 2 or more abbreviated new drug applications under which the drug is commercially marketed; or

''(VII) a sterile opthlamic drug intended for topical use on or in the eye.

''(D) OTHER DEFINITIONS.—For purposes of this section:

''(i)(I) The term 'exporter' means a person that is in the business of exporting a drug to individuals in the United States from Canada or from a permitted country designated by

the Secretary under subclause (II), or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(II) The Secretary shall designate a permitted country under subparagraph (E) (other than Canada) as a country from which an exporter may export a drug to individuals in the United States if the Secretary determines that—

''(aa) the country has statutory or regulatory standards that are equivalent to the standards in the United States and Canada with respect to—

''(AA) the training of pharmacists;

''(BB) the practice of pharmacy; and

''(CC) the protection of the privacy of personal medical information; and

''(bb) the importation of drugs to individuals in the United States from the country will not adversely affect public health.

''(ii) The term 'importer' means a pharmacy, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b), seeks to be in such business.

''(iii) The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

''(iv) The term 'pharmacy' means a person that—

''(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

''(II) employs 1 or more pharmacists.

''(v) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(vi) The term 'wholesaler'—

''(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A); and

''(II) does not include a person authorized to import drugs under section 801(d)(1).

''(E) PERMITTED COUNTRY.—The term 'permitted country' means—

''(i) Australia;

''(ii) Canada;

''(iii) a member country of the European Union, but does not include a member country with respect to which—

''(I) the country's Annex to the Treaty of Accession to the European Union 2003 includes a transitional measure for the regulation of human pharmaceutical products that has not expired; or

''(II) the Secretary determines that the requirements described in subclauses (I) and (II) of clause (vii) will not be met by the date on which such transitional measure for the regulation of human pharmaceutical products expires;

''(iv) Japan;

''(v) New Zealand;

''(vi) Switzerland; and

''(vii) a country in which the Secretary determines the following requirements are met:

''(I) The country has statutory or regulatory requirements—

''(aa) that require the review of drugs for safety and effectiveness by an entity of the government of the country;

''(bb) that authorize the approval of only those drugs that have been determined to be safe and effective by experts employed by or acting on behalf of such entity and qualified by scientific training and experience to evaluate the safety and effectiveness of drugs on the basis of adequate and well-controlled investigations, including clinical investigations, conducted by experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs;

''(cc) that require the methods used in, and the facilities and controls used for the manufacture, processing, and packing of drugs in the country to be adequate to preserve their identity, quality, purity, and strength;

''(dd) for the reporting of adverse reactions to drugs and procedures to withdraw approval and remove drugs found not to be safe or effective; and

''(ee) that require the labeling and promotion of drugs to be in accordance with the approval of the drug.

''(II) The valid marketing authorization system in the country is equivalent to the systems in the countries described in clauses (i) through (vi).

''(III) The importation of drugs to the United States from the country will not adversely affect public health.

''(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

''(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred to in this subsection as a 'registrant') submits to the Secretary a registration containing the following:

''(A)(i) In the case of an exporter, the name of the exporter and an identification of all places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter.

''(ii) In the case of an importer, the name of the importer and an identification of the places of business of the importer at which the importer initially receives a qualifying drug after importation (which shall not exceed 3 places of business except by permission of the Secretary).

''(B) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under—

''(i) in the case of an importer, subsections (c), (d), (e), (g), and (j) (relating to the sources of imported qualifying drugs; the inspection of facilities of the importer; the payment of fees; compliance with the standards referred to in section 801(a); and maintenance of records and samples); or

''(ii) in the case of an exporter, subsections (c), (d), (f), (g), (h), (i), and (j) (relating to the sources of exported qualifying drugs; the inspection of facilities of the exporter and the marking of compliant shipments; the payment of fees; and compliance with the standards referred to in section 801(a); being licensed as a pharmacist; conditions for individual importation; and maintenance of records and samples).

''(C) An agreement by the registrant that the registrant will not under subsection (a) import or export any drug that is not a qualifying drug.

''(D) An agreement by the registrant to—

''(i) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country that the registrant has exported or imported, or intends to export or import, to the United States under subsection (a);

''(ii) provide for the return to the registrant of such drug; and

''(iii) cease, or not begin, the exportation or importation of such drug unless the Secretary has notified the registrant that exportation or importation of such drug may proceed.

''(E) An agreement by the registrant to ensure and monitor compliance with each registration condition, to promptly correct any noncompliance with such a condition, and to promptly report to the Secretary any such noncompliance.

''(F) A plan describing the manner in which the registrant will comply with the agreement under subparagraph (E).

''(G) An agreement by the registrant to enforce a contract under subsection (c)(3)(B) against a party in the chain of custody of a qualifying drug with respect to the authority of the Secretary under clauses (ii) and (iii) of that subsection.

''(H) An agreement by the registrant to notify the Secretary not more than 30 days before the registrant intends to make the change, of—

''(i) any change that the registrant intends to make regarding information provided under subparagraph (A) or (B); and

''(ii) any change that the registrant intends to make in the compliance plan under subparagraph (F).

''(I) In the case of an exporter:

''(i) An agreement by the exporter that a qualifying drug will not under subsection (a) be exported to any individual not authorized pursuant to subsection (a)(2)(B) to be an importer of such drug.

''(ii) An agreement to post a bond, payable to the Treasury of the United States that is equal in value to the lesser of—

''(I) the value of drugs exported by the exporter to the United States in a typical 4-week period over the course of a year under this section; or

''(II) $1,000,000.

''(iii) An agreement by the exporter to comply with applicable provisions of Canadian law, or the law of the permitted country designated under subsection (a)(4)(D)(i)(II) in which the exporter is located, that protect the privacy of personal information with respect to each individual importing a prescription drug from the exporter under subsection (a)(2)(B).

''(iv) An agreement by the exporter to report to the Secretary—

''(I) not later than August 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the 6-month period from January 1 through June 30 of that year; and

''(II) not later than January 1 of each fiscal year, the total price and the total volume of drugs exported to the United States by the exporter during the previous fiscal year.

''(J) In the case of an importer, an agreement by the importer to report to the Secretary—

''(i) not later than August 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the 6-month period from January 1 through June 30 of that fiscal year; and

''(ii) not later than January 1 of each fiscal year, the total price and the total volume of drugs imported to the United States by the importer during the previous fiscal year.

''(K) Such other provisions as the Secretary may require by regulation to protect the public health while permitting—

''(i) the importation by pharmacies, groups of pharmacies, and wholesalers as registered importers of qualifying drugs under subsection (a); and

''(ii) importation by individuals of qualifying drugs under subsection (a).

''(2) APPROVAL OR DISAPPROVAL OF REGISTRATION.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the registrant is not in compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

''(B) CHANGES IN REGISTRATION INFORMATION.—Not later than 30 days after receiving a notice under paragraph (1)(H) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant of the determination.

''(3) PUBLICATION OF CONTACT INFORMATION FOR REGISTERED EXPORTERS.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website and the information provided through the toll-free telephone number accordingly.

''(4) SUSPENSION AND TERMINATION.—

''(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under paragraph (1):

''(i) Subject to clause (ii), the Secretary may suspend the registration if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with a registration condition.

''(ii) If the Secretary determines that, under color of the registration, the exporter has exported a drug or the importer has imported a drug that is not a qualifying drug, or a drug that does not comply with subsection (g)(2)(A) or (g)(4), or has exported a qualifying drug to an individual in violation of subsection (i), the Secretary shall immediately suspend the registration. A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

''(iii) The Secretary may reinstate the registration, whether suspended under clause (i) or (ii), if the Secretary determines that the registrant has demonstrated that further violations of registration conditions will not occur.

''(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is terminated, any registration submitted under paragraph (1) by the registrant, or a person that is a partner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

''(5) DEFAULT OF BOND.—A bond required to be posted by an exporter under paragraph (1)(I)(ii) shall be defaulted and paid to the Treasury of the United States if, after opportunity for an informal hearing, the Secretary determines that the exporter has—

''(A) exported a drug to the United States that is not a qualifying drug or that is not in compliance with subsection (g)(2)(A), (g)(4), or (i); or

''(B) failed to permit the Secretary to conduct an inspection described under subsection (d).

''(c) SOURCES OF QUALIFYING DRUGS.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported into the United States only if there is compliance with the following:

''(1) The drug was manufactured in an establishment—

''(A) required to register under subsection (h) or (i) of section 510; and

''(B)(i) inspected by the Secretary; or

''(ii) for which the Secretary has elected to rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided for under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(2) The establishment is located in any country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug is manufactured for distribution in a foreign country that is not a permitted country).

''(3) The exporter or importer obtained the drug—

''(A) directly from the establishment; or

''(B) directly from an entity that, by contract with the exporter or importer—

''(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that, for the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties to the transaction);

''(ii) agrees to permit the Secretary to inspect such statements and related records to determine their accuracy;

''(iii) agrees, with respect to the qualifying drugs involved, to permit the Secretary to inspect warehouses and other facilities, including records, of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

''(iv) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority regarding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

''(4)(A) The foreign country from which the importer will import the drug is a permitted country; or

''(B) The foreign country from which the exporter will export the drug is the permitted country in which the exporter is located.

''(5) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

''(6) The exporter or importer retains a sample of each lot of the drug for testing by the Secretary.

''(d) INSPECTION OF FACILITIES; MARKING OF SHIPMENTS.—

''(1) INSPECTION OF FACILITIES.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions—

''(A) the exporter agrees to permit the Secretary—

''(i) to conduct onsite inspections, including monitoring on a day-to-day basis, of places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the exporter;

''(ii) to have access, including on a day-to-day basis, to—

''(I) records of the exporter that relate to the export of such drugs, including financial records; and

''(II) samples of such drugs;

''(iii) to carry out the duties described in paragraph (3); and

''(iv) to carry out any other functions determined by the Secretary to be necessary regarding the compliance of the exporter; and

''(B) the Secretary has assigned 1 or more employees of the Secretary to carry out the functions described in this subsection for the Secretary randomly, but not less than 12 times annually, on the premises of places of businesses referred to in subparagraph (A)(i), and such an assignment remains in effect on a continuous basis.

''(2) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the exporter involved agrees to affix to each shipping container of qualifying drugs exported under subsection (a) such markings as the Secretary determines to be necessary to identify the shipment as being in compliance with all registration conditions. Markings under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings to any shipping container that is not authorized to bear the markings; and

''(B) include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies.

''(3) CERTAIN DUTIES RELATING TO EXPORTERS.—Duties of the Secretary with respect to an exporter include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the exporter at which qualifying drugs are stored and from which qualifying drugs are shipped.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the exporter, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an exporter.

''(C) Randomly reviewing records of exports to individuals for the purpose of determining whether the drugs are being imported by the individuals in accordance with the conditions under subsection (i). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

''(D) Monitoring the affixing of markings under paragraph (2).

''(E) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records, of other parties in the chain of custody of qualifying drugs.

''(F) Determining whether the exporter is in compliance with all other registration conditions.

''(4) PRIOR NOTICE OF SHIPMENTS.—A registration condition is that, not less than 8 hours and not more than 5 days in advance of the time of the importation of a shipment of qualifying drugs, the importer involved agrees to submit to the Secretary a notice with respect to the shipment of drugs to be imported or offered for import into the United States under subsection (a). A notice under the preceding sentence shall include—

''(A) the name and complete contact information of the person submitting the notice;

''(B) the name and complete contact information of the importer involved;

''(C) the identity of the drug, including the established name of the drug, the quantity of

the drug, and the lot number assigned by the manufacturer;

''(D) the identity of the manufacturer of the drug, including the identity of the establishment at which the drug was manufactured;

''(E) the country from which the drug is shipped;

''(F) the name and complete contact information for the shipper of the drug;

''(G) anticipated arrival information, including the port of arrival and crossing location within that port, and the date and time;

''(H) a summary of the chain of custody of the drug from the establishment in which the drug was manufactured to the importer;

''(I) a declaration as to whether the Secretary has ordered that importation of the drug from the permitted country cease under subsection (g)(2)(C) or (D); and

''(J) such other information as the Secretary may require by regulation.

''(5) MARKING OF COMPLIANT SHIPMENTS.—A registration condition is that the importer involved agrees, before wholesale distribution (as defined in section 503(e)) of a qualifying drug that has been imported under subsection (a), to affix to each container of such drug such markings or other technology as the Secretary determines necessary to identify the shipment as being in compliance with all registration conditions, except that the markings or other technology shall not be required on a drug that bears comparable, compatible markings or technology from the manufacturer of the drug. Markings or other technology under the preceding sentence shall—

''(A) be designed to prevent affixation of the markings or other technology to any container that is not authorized to bear the markings; and

''(B) shall include anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of such technologies.

''(6) CERTAIN DUTIES RELATING TO IMPORTERS.—Duties of the Secretary with respect to an importer include the following:

''(A) Inspecting, randomly, but not less than 12 times annually, the places of business of the importer at which a qualifying drug is initially received after importation.

''(B) During the inspections under subparagraph (A), verifying the chain of custody of a statistically significant sample of qualifying drugs from the establishment in which the drug was manufactured to the importer, which shall be accomplished or supplemented by the use of anticounterfeiting or track-and-trace technologies, taking into account the economic and technical feasibility of those technologies, except that a drug that lacks such technologies from the point of manufacture shall not for that reason be excluded from importation by an importer.

''(C) Reviewing notices under paragraph (4).

''(D) Inspecting as the Secretary determines is necessary the warehouses and other facilities, including records of other parties in the chain of custody of qualifying drugs.

''(E) Determining whether the importer is in compliance with all other registration conditions.

''(e) IMPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the importer involved pays to the Secretary a fee of $10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the importer involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for importers for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered importers, including the costs associated with—

''(i) inspecting the facilities of registered importers, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(6);

''(ii) developing, implementing, and operating under such subsection an electronic system for submission and review of the notices required under subsection (d)(4) with respect to shipments of qualifying drugs under subsection (a) to assess compliance with all registration conditions when such shipments are offered for import into the United States; and

''(iii) inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered importers under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered importers during that fiscal year by adding the total price of qualifying drugs imported by each registered importer during that fiscal year, as reported to the Secretary by each registered importer under subsection (b)(1)(J).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered importers during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered importer on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL IMPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an importer shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the importer of the volume of qualifying drugs imported by importers under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(f) EXPORTER FEES.—

''(1) REGISTRATION FEE.—A registration condition is that the exporter involved pays to the Secretary a fee of $10,000 due on the date on which the exporter first submits that registration to the Secretary under subsection (b).

''(2) INSPECTION FEE.—A registration condition is that the exporter involved pays a fee to the Secretary in accordance with this subsection. Such fee shall be paid not later than October 1 and April 1 of each fiscal year in the amount provided for under paragraph (3).

''(3) AMOUNT OF INSPECTION FEE.—

''(A) AGGREGATE TOTAL OF FEES.—Not later than 30 days before the start of each fiscal year, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, shall establish an aggregate total of fees to be collected under paragraph (2) for exporters for that fiscal year that is sufficient, and not more than necessary, to pay the costs for that fiscal year of administering this section with respect to registered exporters, including the costs associated with—

''(i) inspecting the facilities of registered exporters, and of other entities in the chain of custody of a qualifying drug as necessary, under subsection (d)(3);

''(ii) developing, implementing, and operating under such subsection a system to screen marks on shipments of qualifying drugs under subsection (a) that indicate compliance with all registration conditions, when such shipments are offered for import into the United States; and

''(iii) screening such markings, and inspecting such shipments as necessary, when offered for import into the United States to determine if such a shipment should be refused admission under subsection (g)(5).

''(B) LIMITATION.—Subject to subparagraph (C), the aggregate total of fees collected under paragraph (2) for a fiscal year shall not exceed 2.5 percent of the total price of qualifying drugs imported during that fiscal year into the United States by registered exporters under subsection (a).

''(C) TOTAL PRICE OF DRUGS.—

''(i) ESTIMATE.—For the purposes of complying with the limitation described in subparagraph (B) when establishing under subparagraph (A) the aggregate total of fees to be collected under paragraph (2) for a fiscal year, the Secretary shall estimate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered

exporter during the 6-month period from January 1 through June 30 of the previous fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(ii) CALCULATION.—Not later than March 1 of the fiscal year that follows the fiscal year for which the estimate under clause (i) is made, the Secretary shall calculate the total price of qualifying drugs imported into the United States by registered exporters during that fiscal year by adding the total price of qualifying drugs exported by each registered exporter during that fiscal year, as reported to the Secretary by each registered exporter under subsection (b)(1)(I)(iv).

''(iii) ADJUSTMENT.—If the total price of qualifying drugs imported into the United States by registered exporters during a fiscal year as calculated under clause (ii) is less than the aggregate total of fees collected under paragraph (2) for that fiscal year, the Secretary shall provide for a pro-rata reduction in the fee due from each registered exporter on April 1 of the subsequent fiscal year so that the limitation described in subparagraph (B) is observed.

''(D) INDIVIDUAL EXPORTER FEE.—Subject to the limitation described in subparagraph (B), the fee under paragraph (2) to be paid on October 1 and April 1 by an exporter shall be an amount that is proportional to a reasonable estimate by the Secretary of the semiannual share of the exporter of the volume of qualifying drugs exported by exporters under subsection (a).

''(4) USE OF FEES.—

''(A) IN GENERAL.—Fees collected by the Secretary under paragraphs (1) and (2) shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration until expended (without fiscal year limitation), and the Secretary may, in consultation with the Secretary of Homeland Security and the Secretary of the Treasury, transfer some proportion of such fees to the appropriation account for salaries and expenses of the Bureau of Customs and Border Protection until expended (without fiscal year limitation).

''(B) AVAILABILITY.—Fees collected by the Secretary under paragraphs (1) and (2) shall be made available to the Food and Drug Administration.

''(C) SOLE PURPOSE.—Fees collected by the Secretary under paragraphs (1) and (2) are only available to the Secretary and, if transferred, to the Secretary of Homeland Security, and are for the sole purpose of paying the costs referred to in paragraph (3)(A).

''(5) COLLECTION OF FEES.—In any case where the Secretary does not receive payment of a fee assessed under paragraph (1) or (2) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(g) COMPLIANCE WITH SECTION 801(a).—

''(1) IN GENERAL.—A registration condition is that each qualifying drug exported under subsection (a) by the registered exporter involved or imported under subsection (a) by the registered importer involved is in compliance with the standards referred to in section 801(a) regarding admission of the drug into the United States, subject to paragraphs (2), (3), and (4).

''(2) SECTION 505; APPROVAL STATUS.—

''(A) IN GENERAL.—A qualifying drug that is imported or offered for import under subsection (a) shall comply with the conditions established in the approved application under section 505(b) for the U.S. label drug as described under this subsection.

''(B) NOTICE BY MANUFACTURER; GENERAL PROVISIONS.—

''(i) IN GENERAL.—The person that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country shall in accordance with this paragraph submit to the Secretary a notice that—

''(I) includes each difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling); or

''(II) states that there is no difference in the qualifying drug from a condition established in the approved application for the U.S. label drug beyond—

''(aa) the variations provided for in the application; and

''(bb) any difference in labeling (except ingredient labeling).

''(ii) INFORMATION IN NOTICE.—A notice under clause (i)(I) shall include the information that the Secretary may require under section 506A, any additional information the Secretary may require (which may include data on bioequivalence if such data are not required under section 506A), and, with respect to the permitted country that approved the qualifying drug for commercial distribution, or with respect to which such approval is sought, include the following:

''(I) The date on which the qualifying drug with such difference was, or will be, introduced for commercial distribution in the permitted country.

''(II) Information demonstrating that the person submitting the notice has also notified the government of the permitted country in writing that the person is submitting to the Secretary a notice under clause (i)(I), which notice describes the difference in the qualifying drug from a condition established in the approved application for the U.S. label drug.

''(III) The information that the person submitted or will submit to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in the country which, if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation.

''(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

''(I) the information provided in the notice is complete and true; and

''(II) a copy of the notice has been provided to the Federal Trade Commission and to the State attorneys general.

''(iv) FEE.—

''(I) IN GENERAL.—If a notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to section 736(a)(1)(A)(ii). Fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

''(II) FEE AMOUNT FOR CERTAIN YEARS.—If no fee amount is in effect under section 736(a)(1)(A)(ii) for a fiscal year, then the amount paid by a person under subclause (I) shall—

''(aa) for the first fiscal year in which no fee amount under such section in effect, be equal to the fee amount under section 736(a)(1)(A)(ii) for the most recent fiscal year for which such section was in effect, adjusted in accordance with section 736(c); and

''(bb) for each subsequent fiscal year in which no fee amount under such section is effect, be equal to the applicable fee amount for the previous fiscal year, adjusted in accordance with section 736(c).

''(v) TIMING OF SUBMISSION OF NOTICES.—

''(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (C) applies shall be submitted to the Secretary not later than 120 days before the qualifying drug with the difference is introduced for commercial distribution in a permitted country, unless the country requires that distribution of the qualifying drug with the difference begin less than 120 days after the country requires the difference.

''(II) OTHER APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than the day on which the qualifying drug with the difference is introduced for commercial distribution in a permitted country.

''(III) OTHER NOTICES.—A notice under clause (i) to which subparagraph (E) applies shall be submitted to the Secretary on the date that the qualifying drug is first introduced for commercial distribution in a permitted country and annually thereafter.

''(vi) REVIEW BY SECRETARY.—

''(I) IN GENERAL.—In this paragraph, the difference in a qualifying drug that is submitted in a notice under clause (i) from the U.S. label drug shall be treated by the Secretary as if it were a manufacturing change to the U.S. label drug under section 506A.

''(II) STANDARD OF REVIEW.—Except as provided in subclause (III), the Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, using the safe and effective standard for approving or disapproving a manufacturing change under section 506A.

''(III) BIOEQUIVALENCE.—If the Secretary would approve the difference in a notice submitted under clause (i) using the safe and effective standard under section 506A and if the Secretary determines that the qualifying drug is not bioequivalent to the U.S. label drug, the Secretary shall—

''(aa) include in the labeling provided under paragraph (3) a prominent advisory that the qualifying drug is safe and effective but is not bioequivalent to the U.S. label drug if the Secretary determines that such an advisory is necessary for health care practitioners and patients to use the qualifying drug safely and effectively; or

''(bb) decline to approve the difference if the Secretary determines that the availability of both the qualifying drug and the U.S. label drug would pose a threat to the public health.

''(IV) REVIEW BY THE SECRETARY.—The Secretary shall review and approve or disapprove the difference in a notice submitted under clause (i), if required under section 506A, not later than 120 days after the date on which the notice is submitted.

''(V) ESTABLISHMENT INSPECTION.—If review of such difference would require an inspection of the establishment in which the qualifying drug is manufactured—

''(aa) such inspection by the Secretary shall be authorized; and

''(bb) the Secretary may rely on a satisfactory report of a good manufacturing practice inspection of the establishment from a permitted country whose regulatory system the Secretary recognizes as equivalent under a mutual recognition agreement, as provided under section 510(i)(3), section 803, or part 26 of title 21, Code of Federal Regulations (or any corresponding successor rule or regulation).

''(vii) PUBLICATION OF INFORMATION ON NOTICES.—

''(I) IN GENERAL.—Through the Internet website of the Food and Drug Administration and a toll-free telephone number, the Secretary shall readily make available to the public a list of notices submitted under clause (i).

''(II) CONTENTS.—The list under subclause (I) shall include the date on which a notice is submitted and whether—

''(aa) a notice is under review;

''(bb) the Secretary has ordered that importation of the qualifying drug from a permitted country cease; or

''(cc) the importation of the drug is permitted under subsection (a).

''(III) UPDATE.—The Secretary shall promptly update the Internet website with any changes to the list.

''(C) NOTICE; DRUG DIFFERENCE REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under subsection (c) or (d)(3)(B)(i) of section 506A, require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) Promptly after the notice is submitted, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general that the notice has been submitted with respect to the qualifying drug involved.

''(ii) If the Secretary has not made a determination whether such a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the qualifying drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country not begin until the Secretary completes review of the notice; and

''(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the order.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease, or provide that an order under clause (ii), if any, remains in effect;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iv) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the Secretary shall—

''(I) vacate the order under clause (ii), if any;

''(II) consider the difference to be a variation provided for in the approved application for the U.S. label drug;

''(III) permit importation of the qualifying drug under subsection (a); and

''(IV) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(D) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (B)(i) that includes a difference that would, under section 506A(d)(3)(B)(ii), not require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

''(i) During the period in which the notice is being reviewed by the Secretary, the authority under this subsection to import the qualifying drug involved continues in effect.

''(ii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

''(I) order that the importation of the qualifying drug involved from the permitted country cease;

''(II) notify the permitted country that approved the qualifying drug for commercial distribution of the determination; and

''(III) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of the determination.

''(iii) If the Secretary determines that such a supplemental application regarding the U.S. label drug would be approved, the difference shall be considered to be a variation provided for in the approved application for the U.S. label drug.

''(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING APPROVAL; NO DIFFERENCE.—In the case of a notice under subparagraph (B)(i) that includes a difference for which, under section 506A(d)(1)(A), a supplemental application would not be required for the difference to be made to the U.S. label drug, or that states that there is no difference, the Secretary—

''(i) shall consider such difference to be a variation provided for in the approved application for the U.S. label drug;

''(ii) may not order that the importation of the qualifying drug involved cease; and

''(iii) shall promptly notify registered exporters and registered importers.

''(F) DIFFERENCES IN ACTIVE INGREDIENT, ROUTE OF ADMINISTRATION, DOSAGE FORM, OR STRENGTH.—

''(i) IN GENERAL.—A person who manufactures a drug approved under section 505(b) shall submit an application under section 505(b) for approval of another drug that is manufactured for distribution in a permitted country by or for the person that manufactures the drug approved under section 505(b) if—

''(I) there is no qualifying drug in commercial distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries with the same active ingredient or ingredients, route of administration, dosage form, and strength as the drug approved under section 505(b); and

''(II) each active ingredient of the other drug is related to an active ingredient of the drug approved under section 505(b), as defined in clause (v).

''(ii) APPLICATION UNDER SECTION 505(b).—The application under section 505(b) required under clause (i) shall—

''(I) request approval of the other drug for the indication or indications for which the drug approved under section 505(b) is labeled;

''(II) include the information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the other drug in that country, which if in a language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and a brief statement of the qualifications of the person that made the translation;

''(III) include a right of reference to the application for the drug approved under section 505(b); and

''(IV) include such additional information as the Secretary may require.

''(iii) TIMING OF SUBMISSION OF APPLICATION.—An application under section 505(b) required under clause (i) shall be submitted to the Secretary not later than the day on which the information referred to in clause (ii)(II) is submitted to the government of the permitted country.

''(iv) NOTICE OF DECISION ON APPLICATION.—The Secretary shall promptly notify registered exporters, registered importers, the Federal Trade Commission, and the State attorneys general of a determination to approve or to disapprove an application under section 505(b) required under clause (i).

''(v) RELATED ACTIVE INGREDIENTS.—For purposes of clause (i)(II), 2 active ingredients are related if they are—

''(I) the same; or

''(II) different salts, esters, or complexes of the same moiety.

''(3) SECTION 502; LABELING.—

''(A) IMPORTATION BY REGISTERED IMPORTER.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered importer, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the qualifying drug bears—

''(I) a copy of the labeling approved for the U.S. label drug under section 505, without regard to whether the copy bears any trademark involved;

''(II) the name of the manufacturer and location of the manufacturer;

''(III) the lot number assigned by the manufacturer;

''(IV) the name, location, and registration number of the importer; and

''(V) the National Drug Code number assigned to the qualifying drug by the Secretary.

''(ii) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer involved, upon request of the importer.

''(iii) REQUESTED LABELING.—The labeling provided by the Secretary under clause (ii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the qualifying drug;

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof;

''(III) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the qualifying drug is safe and effective but not bioequivalent to the U.S. label drug; and

''(IV) if the inactive ingredients of the qualifying drug are different from the inactive ingredients for the U.S. label drug, include—

''(aa) a prominent notice that the ingredients of the qualifying drug differ from the ingredients of the U.S. label drug and that the qualifying drug must be dispensed with an advisory to people with allergies about this difference and a list of ingredients; and

''(bb) a list of the ingredients of the qualifying drug as would be required under section 502(e).

''(B) IMPORTATION BY INDIVIDUAL.—

''(i) IN GENERAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 and the labeling requirements under the approved application for the U.S. label drug if the packaging and labeling of the qualifying drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and the labeling of the qualifying drug includes—

''(I) directions for use by the consumer;

''(II) the lot number assigned by the manufacturer;

''(III) the name and registration number of the exporter;

''(IV) if required under paragraph (2)(B)(vi)(III), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug;

''(V) if the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(aa) a prominent advisory that persons with an allergy should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(bb) a list of the ingredients of the drug as would be required under section 502(e); and

''(VI) a copy of any special labeling that would be required by the Secretary had the U.S. label drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears any trademark involved.

''(ii) PACKAGING.—A qualifying drug offered for import to an individual by an exporter under this section that is packaged in a unit-of-use container (as those items are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(I) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(II) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the exporter will provide the drug in packaging that is compliant at no additional cost.

''(iii) REQUEST FOR COPY OF SPECIAL LABELING AND INGREDIENT LIST.—The Secretary shall provide to the registered exporter involved a copy of the special labeling, the advisory, and the ingredient list described under clause (i), upon request of the exporter.

''(iv) REQUESTED LABELING AND INGREDIENT LIST.—The labeling and ingredient list provided by the Secretary under clause (iii) shall—

''(I) include the established name, as defined in section 502(e)(3), for each active ingredient in the drug; and

''(II) not include the proprietary name of the U.S. label drug or any active ingredient thereof.

''(4) SECTION 501; ADULTERATION.—A qualifying drug that is imported or offered for import under subsection (a) shall be considered to be in compliance with section 501 if the drug is in compliance with subsection (c).

''(5) STANDARDS FOR REFUSING ADMISSION.—A drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission into the United States if 1 or more of the following applies:

''(A) The drug is not a qualifying drug.

''(B) A notice for the drug required under paragraph (2)(B) has not been submitted to the Secretary.

''(C) The Secretary has ordered that importation of the drug from the permitted country cease under subparagraph (C) or (D) of paragraph (2).

''(D) The drug does not comply with paragraph (3) or (4).

''(E) The shipping container appears damaged in a way that may affect the strength, quality, or purity of the drug.

''(F) The Secretary becomes aware that—

''(i) the drug may be counterfeit;

''(ii) the drug may have been prepared, packed, or held under insanitary conditions; or

''(iii) the methods used in, or the facilities or controls used for, the manufacturing, processing, packing, or holding of the drug do not conform to good manufacturing practice.

''(G) The Secretary has obtained an injunction under section 302 that prohibits the distribution of the drug in interstate commerce.

''(H) The Secretary has under section 505(e) withdrawn approval of the drug.

''(I) The manufacturer of the drug has instituted a recall of the drug.

''(J) If the drug is imported or offered for import by a registered importer without submission of a notice in accordance with subsection (d)(4).

''(K) If the drug is imported or offered for import from a registered exporter to an individual and 1 or more of the following applies:

''(i) The shipping container for such drug does not bear the markings required under subsection (d)(2).

''(ii) The markings on the shipping container appear to be counterfeit.

''(iii) The shipping container or markings appear to have been tampered with.

''(h) EXPORTER LICENSURE IN PERMITTED COUNTRY.—A registration condition is that the exporter involved agrees that a qualifying drug will be exported to an individual only if the Secretary has verified that—

''(1) the exporter is authorized under the law of the permitted country in which the exporter is located to dispense prescription drugs; and

''(2) the exporter employs persons that are licensed under the law of the permitted country in which the exporter is located to dispense prescription drugs in sufficient number to dispense safely the drugs exported by the exporter to individuals, and the exporter assigns to those persons responsibility for dispensing such drugs to individuals.

''(i) INDIVIDUALS; CONDITIONS FOR IMPORTATION.—

''(1) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

''(A) The drug is accompanied by a copy of a prescription for the drug, which prescription—

''(i) is valid under applicable Federal and State laws; and

''(ii) was issued by a practitioner who, under the law of a State of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

''(B) The drug is accompanied by a copy of the documentation that was required under the law or regulations of the permitted country in which the exporter is located, as a condition of dispensing the drug to the individual.

''(C) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

''(i) to indicate that the prescription, and the equivalent document in the permitted country in which the exporter is located, have been filled; and

''(ii) to prevent a duplicative filling by another pharmacist.

''(D) The individual has provided to the registered exporter a complete list of all drugs used by the individual for review by the individuals who dispense the drug.

''(E) The quantity of the drug does not exceed a 90-day supply.

''(F) The drug is not an ineligible subpart H drug. For purposes of this section, a prescription drug is an 'ineligible subpart H drug' if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval), with restrictions under section 520 of such part to assure safe use, and the Secretary has published in the Federal Register a notice that the Secretary has determined that good cause exists to prohibit the drug from being imported pursuant to this subsection.

''(2) NOTICE REGARDING DRUG REFUSED ADMISSION.—If a registered exporter ships a drug to an individual pursuant to subsection (a)(2)(B) and the drug is refused admission to the United States, a written notice shall be sent to the individual and to the exporter that informs the individual and the exporter of such refusal and the reason for the refusal.

''(j) MAINTENANCE OF RECORDS AND SAMPLES.—

''(1) IN GENERAL.—A registration condition is that the importer or exporter involved shall—

''(A) maintain records required under this section for not less than 2 years; and

''(B) maintain samples of each lot of a qualifying drug required under this section for not more than 2 years.

''(2) PLACE OF RECORD MAINTENANCE.—The records described under paragraph (1) shall be maintained—

''(A) in the case of an importer, at the place of business of the importer at which the importer initially receives the qualifying drug after importation; or

''(B) in the case of an exporter, at the facility from which the exporter ships the qualifying drug to the United States.

''(k) DRUG RECALLS.—

''(1) MANUFACTURERS.—A person that manufactures a qualifying drug imported from a permitted country under this section shall promptly inform the Secretary—

''(A) if the drug is recalled or withdrawn from the market in a permitted country;

''(B) how the drug may be identified, including lot number; and

''(C) the reason for the recall or withdrawal.

''(2) SECRETARY.—With respect to each permitted country, the Secretary shall—

''(A) enter into an agreement with the government of the country to receive information about recalls and withdrawals of qualifying drugs in the country; or

''(B) monitor recalls and withdrawals of qualifying drugs in the country using any information that is available to the public in any media.

''(3) NOTICE.—The Secretary may notify, as appropriate, registered exporters, registered importers, wholesalers, pharmacies, or the public of a recall or withdrawal of a qualifying drug in a permitted country.

''(l) DRUG LABELING AND PACKAGING.—

''(1) IN GENERAL.—When a qualifying drug that is imported into the United States by an importer under subsection (a) is dispensed by a pharmacist to an individual, the pharmacist shall provide that the packaging and labeling of the drug complies with all applicable regulations promulgated under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.) and shall include with any other labeling provided to the individual the following:

''(A) The lot number assigned by the manufacturer.

''(B) The name and registration number of the importer.

''(C) If required under paragraph (2)(B)(vi)(III) of subsection (g), a prominent advisory that the drug is safe and effective but not bioequivalent to the U.S. label drug.

''(D) If the inactive ingredients of the drug are different from the inactive ingredients for the U.S. label drug—

''(i) a prominent advisory that persons with allergies should check the ingredient list of the drug because the ingredients of the drug differ from the ingredients of the U.S. label drug; and

''(ii) a list of the ingredients of the drug as would be required under section 502(e).

''(2) PACKAGING.—A qualifying drug that is packaged in a unit-of-use container (as those terms are defined in the United States Pharmacopeia and National Formulary) shall not be repackaged, provided that—

''(A) the packaging complies with all applicable regulations under sections 3 and 4 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.); or

''(B) the consumer consents to waive the requirements of such Act, after being informed that the packaging does not comply with such Act and that the pharmacist will provide the drug in packaging that is compliant at no additional cost.

''(m) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, this section does not authorize the importation into the United States of a qualifying drug donated or otherwise supplied for free or at nominal cost by the manufacturer of the drug to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country.

''(n) UNFAIR AND DISCRIMINATORY ACTS AND PRACTICES.—

''(1) IN GENERAL.—It is unlawful for a manufacturer, directly or indirectly (including by being a party to a licensing agreement or other agreement), to—

''(A) discriminate by charging a higher price for a prescription drug sold to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section than the price that is charged, inclusive of rebates or other incentives to the permitted country or other person, to another person that is in the same country and that does not export a qualifying drug into the United States under this section;

''(B) discriminate by charging a higher price for a prescription drug sold to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section than the price that is charged to another person in the United States that does not import a qualifying drug under this section, or that does not distribute, sell, or use such a drug;

''(C) discriminate by denying, restricting, or delaying supplies of a prescription drug to a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or to a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(D) discriminate by publicly, privately, or otherwise refusing to do business with a registered exporter or other person in a permitted country that exports a qualifying drug to the United States under this section or with a registered importer or other person that distributes, sells, or uses a qualifying drug imported into the United States under this section;

''(E) knowingly fail to submit a notice under subsection (g)(2)(B)(i), knowingly fail to submit such a notice on or before the date specified in subsection (g)(2)(B)(v) or as otherwise required under paragraphs (3), (4), and (5) of section 1304(e) of the Pharmaceutical Market Access and Drug Safety Act of 2010, knowingly submit such a notice that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such a notice;

''(F) knowingly fail to submit an application required under subsection (g)(2)(F), knowingly fail to submit such an application on or before the date specified in subsection (g)(2)(F)(iii), knowingly submit such an application that makes a materially false, fictitious, or fraudulent statement, or knowingly fail to provide promptly any information requested by the Secretary to review such an application;

''(G) cause there to be a difference (including a difference in active ingredient, route of administration, dosage form, strength, formulation, manufacturing establishment, manufacturing process, or person that manufactures the drug) between a prescription drug for distribution in the United States and the drug for distribution in a permitted country;

''(H) refuse to allow an inspection authorized under this section of an establishment that manufactures a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country;

''(I) fail to conform to the methods used in, or the facilities used for, the manufacturing, processing, packing, or holding of a qualifying drug that is, or will be, introduced for commercial distribution in a permitted country to good manufacturing practice under this Act;

''(J) become a party to a licensing agreement or other agreement related to a qualifying drug that fails to provide for compliance with all requirements of this section with respect to such drug;

''(K) enter into a contract that restricts, prohibits, or delays the importation of a qualifying drug under this section;

''(L) engage in any other action to restrict, prohibit, or delay the importation of a qualifying drug under this section; or

''(M) engage in any other action that the Federal Trade Commission determines to discriminate against a person that engages or attempts to engage in the importation of a qualifying drug under this section.

''(2) REFERRAL OF POTENTIAL VIOLATIONS.—The Secretary shall promptly refer to the Federal Trade Commission each potential violation of subparagraph (E), (F), (G), (H), or (I) of paragraph (1) that becomes known to the Secretary.

''(3) AFFIRMATIVE DEFENSE.—

''(A) DISCRIMINATION.—It shall be an affirmative defense to a charge that a manufacturer has discriminated under subparagraph (A), (B), (C), (D), or (M) of paragraph (1) that the higher price charged for a prescription drug sold to a person, the denial, restriction, or delay of supplies of a prescription drug to a person, the refusal to do business with a person, or other discriminatory activity against a person, is not based, in whole or in part, on—

''(i) the person exporting or importing a qualifying drug into the United States under this section; or

''(ii) the person distributing, selling, or using a qualifying drug imported into the United States under this section.

''(B) DRUG DIFFERENCES.—It shall be an affirmative defense to a charge that a manufacturer has caused there to be a difference described in subparagraph (G) of paragraph (1) that—

''(i) the difference was required by the country in which the drug is distributed;

''(ii) the Secretary has determined that the difference was necessary to improve the safety or effectiveness of the drug;

''(iii) the person manufacturing the drug for distribution in the United States has given notice to the Secretary under subsection (g)(2)(B)(i) that the drug for distribution in the United States is not different from a drug for distribution in permitted countries whose combined population represents at least 50 percent of the total population of all permitted countries; or

''(iv) the difference was not caused, in whole or in part, for the purpose of restricting importation of the drug into the United States under this section.

''(4) EFFECT OF SUBSECTION.—

''(A) SALES IN OTHER COUNTRIES.—This subsection applies only to the sale or distribution of a prescription drug in a country if the manufacturer of the drug chooses to sell or distribute the drug in the country. Nothing in this subsection shall be construed to compel the manufacturer of a drug to distribute or sell the drug in a country.

''(B) DISCOUNTS TO INSURERS, HEALTH PLANS, PHARMACY BENEFIT MANAGERS, AND COVERED ENTITIES.—Nothing in this subsection shall be construed to—

''(i) prevent or restrict a manufacturer of a prescription drug from providing discounts to an insurer, health plan, pharmacy benefit manager in the United States, or covered entity in the drug discount program under section 340B of the Public Health Service Act (42 U.S.C. 256b) in return for inclusion of the drug on a formulary;

''(ii) require that such discounts be made available to other purchasers of the prescription drug; or

''(iii) prevent or restrict any other measures taken by an insurer, health plan, or pharmacy benefit manager to encourage consumption of such prescription drug.

''(C) CHARITABLE CONTRIBUTIONS.—Nothing in this subsection shall be construed to—

''(i) prevent a manufacturer from donating a prescription drug, or supplying a prescription drug at nominal cost, to a charitable or humanitarian organization, including the United Nations and affiliates, or to a government of a foreign country; or

''(ii) apply to such donations or supplying of a prescription drug.

''(5) ENFORCEMENT.—

''(A) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this subsection 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)).

''(B) ACTIONS BY THE COMMISSION.—The Federal Trade Commission—

''(i) shall enforce this subsection 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 a part of this section; and

''(ii) may seek monetary relief threefold the damages sustained, in addition to any other remedy available to the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

''(6) ACTIONS BY STATES.—

''(A) IN GENERAL.—

''(i) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State have been adversely affected by any manufacturer that violates paragraph (1), the attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction to—

''(I) enjoin that practice;

''(II) enforce compliance with this subsection;

''(III) obtain damages, restitution, or other compensation on behalf of residents of the State and persons doing business in the State, including threefold the damages; or

''(IV) obtain such other relief as the court may consider to be appropriate.

''(ii) NOTICE.—

''(I) IN GENERAL.—Before filing an action under clause (i), the attorney general of the State involved shall provide to the Federal Trade Commission—

''(aa) written notice of that action; and

''(bb) a copy of the complaint for that action.

''(II) EXEMPTION.—Subclause (I) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph, if the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

''(B) INTERVENTION.—

''(i) IN GENERAL.—On receiving notice under subparagraph (A)(ii), the Federal Trade Commission shall have the right to intervene in the action that is the subject of the notice.

''(ii) EFFECT OF INTERVENTION.—If the Federal Trade Commission intervenes in an action under subparagraph (A), it shall have the right—

''(I) to be heard with respect to any matter that arises in that action; and

''(II) to file a petition for appeal.

''(C) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this subsection shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

''(i) conduct investigations;

''(ii) administer oaths or affirmations; or

''(iii) compel the attendance of witnesses or the production of documentary and other evidence.

''(D) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Federal Trade Commission for a violation of paragraph (1), a State may not, during the pendency of that action, institute an action under subparagraph (A) for the same violation against any defendant named in the complaint in that action.

''(E) VENUE.—Any action brought under subparagraph (A) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(F) SERVICE OF PROCESS.—In an action brought under subparagraph (A), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(G) MEASUREMENT OF DAMAGES.—In any action under this paragraph to enforce a cause of action under this subsection in which there has been a determination that a defendant has violated a provision of this subsection, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

''(H) EXCLUSION ON DUPLICATIVE RELIEF.—The district court shall exclude from the amount of monetary relief awarded in an action under this paragraph brought by the attorney general of a State any amount of monetary relief which duplicates amounts which have been awarded for the same injury.

''(7) EFFECT ON ANTITRUST LAWS.—Nothing in this subsection shall be construed to modify, impair, or supersede the operation of the antitrust laws. For the purpose of this subsection, the term 'antitrust laws' has the meaning given it in the first section of the Clayton Act, except that it includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

''(8) MANUFACTURER.—In this subsection, the term 'manufacturer' means any entity, including any affiliate or licensee of that entity, that is engaged in—

''(A) the production, preparation, propagation, compounding, conversion, or processing of a prescription drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or

''(B) the packaging, repackaging, labeling, relabeling, or distribution of a prescription drug.''.

(b) PROHIBITED ACTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301 (21 U.S.C. 331), by striking paragraph (aa) and inserting the following:

''(aa)(1) The sale or trade by a pharmacist, or by a business organization of which the pharmacist is a part, of a qualifying drug that under section 804(a)(2)(A) was imported by the pharmacist, other than—

''(A) a sale at retail made pursuant to dispensing the drug to a customer of the pharmacist or organization; or

''(B) a sale or trade of the drug to a pharmacy or a wholesaler registered to import drugs under section 804.

''(2) The sale or trade by an individual of a qualifying drug that under section 804(a)(2)(B) was imported by the individual.

''(3) The making of a materially false, fictitious, or fraudulent statement or representation, or a material omission, in a notice under clause (i) of section 804(g)(2)(B) or in an application required under section 804(g)(2)(F), or the failure to submit such a notice or application.

''(4) The importation of a drug in violation of a registration condition or other requirement under section 804, the falsification of any record required to be maintained, or provided to the Secretary, under such section, or the violation of any registration condition or other requirement under such section.''; and

(2) in section 303(a) (21 U.S.C. 333(a)), by striking paragraph (6) and inserting the following:

''(6) Notwithstanding subsection (a), any person that knowingly violates section 301(i)(2) or (3) or section 301(aa)(4) shall be imprisoned not more than 10 years, or fined in accordance with title 18, United States Code, or both.''.

(c) AMENDMENT OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

''(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that is not shipped by a registered exporter under section 804, and that is refused admission under subsection (a), the Secretary shall notify the individual that—

''(1) the drug has been refused admission because the drug was not a lawful import under section 804;

''(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

''(3) the individual may under section 804 lawfully import certain prescription drugs from exporters registered with the Secretary under section 804; and

''(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration or through a toll-free telephone number required under section 804.''.

(2) ESTABLISHMENT REGISTRATION.—Section 510(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) is amended in paragraph (1) by inserting after ''import into the United States'' the following: '', including a drug that is, or may be, imported or offered for import into the United States under section 804,''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 90 days after the date of enactment of this Act.

(d) EXHAUSTION.—

(1) IN GENERAL.—Section 271 of title 35, United States Code, is amended—

(A) by redesignating subsections (h) and (i) as (i) and (j), respectively; and

(B) by inserting after subsection (g) the following:

''(h) It shall not be an act of infringement to use, offer to sell, or sell within the United States or to import into the United States any patented invention under section 804 of the Federal Food, Drug, and Cosmetic Act that was first sold abroad by or under authority of the owner or licensee of such patent.''.

(2) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed to affect the ability of a patent owner or licensee to enforce their patent, subject to such amendment.

(e) EFFECT OF SECTION 804.—

(1) IN GENERAL.—Section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall permit the importation of qualifying drugs (as defined in such section 804) into the United States without regard to the status of the issuance of implementing regulations—

(A) from exporters registered under such section 804 on the date that is 90 days after the date of enactment of this Act; and

(B) from permitted countries, as defined in such section 804, by importers registered under such section 804 on the date that is 1 year after the date of enactment of this Act.

(2) REVIEW OF REGISTRATION BY CERTAIN EXPORTERS.—

(A) REVIEW PRIORITY.—In the review of registrations submitted under subsection (b) of such section 804, registrations submitted by entities in Canada that are significant exporters of prescription drugs to individuals in the United States as of the date of enactment of this Act will have priority during the 90 day period that begins on such date of enactment.

(B) PERIOD FOR REVIEW.—During such 90-day period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is, as applied to such entities, deemed to be 30 days.

(C) LIMITATION.—That an exporter in Canada exports, or has exported, prescription drugs to individuals in the United States on or before the date that is 90 days after the date of enactment of this Act shall not serve as a basis, in whole or in part, for disapproving a registration under such section 804 from the exporter.

(D) FIRST YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') may limit the number of registered exporters under such section 804 to not less than 50, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(E) SECOND YEAR LIMIT ON NUMBER OF EXPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 100, so

long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(F) FURTHER LIMIT ON NUMBER OF EXPORTERS.—During any 1-year period beginning on a date that is 2 or more years after the date of enactment of this Act, the Secretary may limit the number of registered exporters under such section 804 to not less than 25 more than the number of such exporters during the previous 1-year period, so long as the Secretary gives priority to those exporters with demonstrated ability to process a high volume of shipments of drugs to individuals in the United States.

(3) LIMITS ON NUMBER OF IMPORTERS.—

(A) FIRST YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 1 year after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 100 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs imported into the United States.

(B) SECOND YEAR LIMIT ON NUMBER OF IMPORTERS.—During the 1-year period beginning on the date that is 2 years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 200 (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups), so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs into the United States.

(C) FURTHER LIMIT ON NUMBER OF IMPORTERS.—During any 1-year period beginning on a date that is 3 or more years after the date of enactment of this Act, the Secretary may limit the number of registered importers under such section 804 to not less than 50 more (of which at least a significant number shall be groups of pharmacies, to the extent feasible given the applications submitted by such groups) than the number of such importers during the previous 1-year period, so long as the Secretary gives priority to those importers with demonstrated ability to process a high volume of shipments of drugs to the United States.

(4) NOTICES FOR DRUGS FOR IMPORT FROM CANADA.—The notice with respect to a qualifying drug introduced for commercial distribution in Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 30 days after the date of enactment of this Act if—

(A) the U.S. label drug (as defined in such section 804) for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period most recently completed before the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(5) NOTICE FOR DRUGS FOR IMPORT FROM OTHER COUNTRIES.—The notice with respect to a qualifying drug introduced for commercial distribution in a permitted country other than Canada as of the date of enactment of this Act that is required under subsection (g)(2)(B)(i) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act if—

(A) the U.S. label drug for the qualifying drug is 1 of the 100 prescription drugs with the highest dollar volume of sales in the United States based on the 12 calendar month period that is first completed on the date that is 120 days after the date of enactment of this Act; or

(B) the notice is a notice under subsection (g)(2)(B)(i)(II) of such section 804.

(6) NOTICE FOR OTHER DRUGS FOR IMPORT.—

(A) GUIDANCE ON SUBMISSION DATES.—The Secretary shall by guidance establish a series of submission dates for the notices under subsection (g)(2)(B)(i) of such section 804 with respect to qualifying drugs introduced for commercial distribution as of the date of enactment of this Act and that are not required to be submitted under paragraph (4) or (5).

(B) CONSISTENT AND EFFICIENT USE OF RESOURCES.—The Secretary shall establish the dates described under subparagraph (A) so that such notices described under subparagraph (A) are submitted and reviewed at a rate that allows consistent and efficient use of the resources and staff available to the Secretary for such reviews. The Secretary may condition the requirement to submit such a notice, and the review of such a notice, on the submission by a registered exporter or a registered importer to the Secretary of a notice that such exporter or importer intends to import such qualifying drug to the United States under such section 804.

(C) PRIORITY FOR DRUGS WITH HIGHER SALES.—The Secretary shall establish the dates described under subparagraph (A) so that the Secretary reviews the notices described under such subparagraph with respect to qualifying drugs with higher dollar volume of sales in the United States before the notices with respect to drugs with lower sales in the United States.

(7) NOTICES FOR DRUGS APPROVED AFTER EFFECTIVE DATE.—The notice required under subsection (g)(2)(B)(i) of such section 804 for a qualifying drug first introduced for commercial distribution in a permitted country (as defined in such section 804) after the date of enactment of this Act shall be submitted to and reviewed by the Secretary as provided under subsection (g)(2)(B) of such section 804, without regard to paragraph (4), (5), or (6).

(8) REPORT.—Beginning with the first full fiscal year after the date of enactment of this Act, not later than 90 days after the end of each fiscal year during which the Secretary reviews a notice referred to in paragraph (4), (5), or (6), the Secretary shall submit a report to Congress concerning the progress of the Food and Drug Administration in reviewing the notices referred to in paragraphs (4), (5), and (6).

(9) USER FEES.—

(A) EXPORTERS.—When establishing an aggregate total of fees to be collected from exporters under subsection (f)(2) of such section 804, the Secretary shall, under subsection (f)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered exporters during the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365.

(B) IMPORTERS.—When establishing an aggregate total of fees to be collected from importers under subsection (e)(2) of such section 804, the Secretary shall, under subsection (e)(3)(C)(i) of such section 804, estimate the total price of drugs imported under subsection (a) of such section 804 into the United States by registered importers during—

(i) the first fiscal year in which this title takes effect to be an amount equal to the amount which bears the same ratio to $1,000,000,000 as the number of days in such fiscal year during which this title is effective bears to 365; and

(ii) the second fiscal year in which this title is in effect to be $3,000,000,000.

(C) SECOND YEAR ADJUSTMENT.—

(i) REPORTS.—Not later than February 20 of the second fiscal year in which this title is in effect, registered importers shall report to the Secretary the total price and the total volume of drugs imported to the United States by the importer during the 4-month period from October 1 through January 31 of such fiscal year.

(ii) REESTIMATE.—Notwithstanding subsection (e)(3)(C)(ii) of such section 804 or subparagraph (B), the Secretary shall reestimate the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during the second fiscal year in which this title is in effect. Such reestimate shall be equal to—

(I) the total price of qualifying drugs imported by each importer as reported under clause (i); multiplied by

(II) 3.

(iii) ADJUSTMENT.—The Secretary shall adjust the fee due on April 1 of the second fiscal year in which this title is in effect, from each importer so that the aggregate total of fees collected under subsection (e)(2) for such fiscal year does not exceed the total price of qualifying drugs imported under subsection (a) of such section 804 into the United States by registered importers during such fiscal year as reestimated under clause (ii).

(D) FAILURE TO PAY FEES.—Notwithstanding any other provision of this section, the Secretary may prohibit a registered importer or exporter that is required to pay user fees under subsection (e) or (f) of such section 804 and that fails to pay such fees within 30 days after the date on which it is due, from importing or offering for importation a qualifying drug under such section 804 until such fee is paid.

(E) ANNUAL REPORT.—

(i) FOOD AND DRUG ADMINISTRATION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e), (f), or (g)(2)(B)(iv) of such section 804, the Secretary shall prepare and submit to the House of Representatives and the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for the fiscal year for which the report is made and credited to the Food and Drug Administration.

(ii) CUSTOMS AND BORDER PROTECTION.—Not later than 180 days after the end of each fiscal year during which fees are collected under subsection (e) or (f) of such section 804, the Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall prepare and submit to the House of Representatives and the Senate a report on the use, by the Bureau of Customs and Border Protection, of the fees, if any, transferred by the Secretary to the Bureau of Customs and Border Protection for the fiscal year for which the report is made.

(10) SPECIAL RULE REGARDING IMPORTATION BY INDIVIDUALS.—

(A) IN GENERAL.—Notwithstanding any provision of this title (or an amendment made by this title), the Secretary shall expedite the designation of any additional permitted countries from which an individual may import a qualifying drug into the United States under such section 804 if any action implemented by the Government of Canada has

the effect of limiting or prohibiting the importation of qualifying drugs into the United States from Canada.

(B) TIMING AND CRITERIA.—The Secretary shall designate such additional permitted countries under subparagraph (A)—

(i) not later than 6 months after the date of the action by the Government of Canada described under such subparagraph; and

(ii) using the criteria described under subsection (a)(4)(D)(i)(II) of such section 804.

(f) IMPLEMENTATION OF SECTION 804.—

(1) INTERIM RULE.—The Secretary may promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section.

(2) NO NOTICE OF PROPOSED RULEMAKING.—The interim rule described under paragraph (1) may be developed and promulgated by the Secretary without providing general notice of proposed rulemaking.

(3) FINAL RULE.—Not later than 1 year after the date on which the Secretary promulgates an interim rule under paragraph (1), the Secretary shall, in accordance with procedures under section 553 of title 5, United States Code, promulgate a final rule for implementing such section 804, which may incorporate by reference provisions of the interim rule provided for under paragraph (1), to the extent that such provisions are not modified.

(g) CONSUMER EDUCATION.—The Secretary shall carry out activities that educate consumers—

(1) with regard to the availability of qualifying drugs for import for personal use from an exporter registered with and approved by the Food and Drug Administration under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by this section, including information on how to verify whether an exporter is registered and approved by use of the Internet website of the Food and Drug Administration and the toll-free telephone number required by this title;

(2) that drugs that consumers attempt to import from an exporter that is not registered with and approved by the Food and Drug Administration can be seized by the United States Customs Service and destroyed, and that such drugs may be counterfeit, unapproved, unsafe, or ineffective;

(3) with regard to the suspension and termination of any registration of a registered importer or exporter under such section 804; and

(4) with regard to the availability at domestic retail pharmacies of qualifying drugs imported under such section 804 by domestic wholesalers and pharmacies registered with and approved by the Food and Drug Administration.

(h) EFFECT ON ADMINISTRATION PRACTICES.—Notwithstanding any provision of this title (and the amendments made by this title), the practices and policies of the Food and Drug Administration and Bureau of Customs and Border Protection, in effect on January 1, 2004, with respect to the importation of prescription drugs into the United States by an individual, on the person of such individual, for personal use, shall remain in effect.

(i) REPORT TO CONGRESS.—The Federal Trade Commission shall, on an annual basis, submit to Congress a report that describes any action taken during the period for which the report is being prepared to enforce the provisions of section 804(n) of the Federal Food, Drug, and Cosmetic Act (as added by this title), including any pending investigations or civil actions under such section.

SEC. 1305. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION INTO UNITED STATES.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.), as amended by section 1304, is further amended by adding at the end the following section:

''SEC. 805. DISPOSITION OF CERTAIN DRUGS DENIED ADMISSION.

''(a) IN GENERAL.—The Secretary of Homeland Security shall deliver to the Secretary a shipment of drugs that is imported or offered for import into the United States if—

''(1) the shipment has a declared value of less than $10,000; and

''(2)(A) the shipping container for such drugs does not bear the markings required under section 804(d)(2); or

''(B) the Secretary has requested delivery of such shipment of drugs.

''(b) NO BOND OR EXPORT.—Section 801(b) does not authorize the delivery to the owner or consignee of drugs delivered to the Secretary under subsection (a) pursuant to the execution of a bond, and such drugs may not be exported.

''(c) DESTRUCTION OF VIOLATIVE SHIPMENT.—The Secretary shall destroy a shipment of drugs delivered by the Secretary of Homeland Security to the Secretary under subsection (a) if—

''(1) in the case of drugs that are imported or offered for import from a registered exporter under section 804, the drugs are in violation of any standard described in section 804(g)(5); or

''(2) in the case of drugs that are not imported or offered for import from a registered exporter under section 804, the drugs are in violation of a standard referred to in section 801(a) or 801(d)(1).

''(d) CERTAIN PROCEDURES.—

''(1) IN GENERAL.—The delivery and destruction of drugs under this section may be carried out without notice to the importer, owner, or consignee of the drugs except as required by section 801(g) or section 804(i)(2). The issuance of receipts for the drugs, and recordkeeping activities regarding the drugs, may be carried out on a summary basis.

''(2) OBJECTIVE OF PROCEDURES.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to described in subsection (c) are identified and destroyed.

''(e) EVIDENCE EXCEPTION.—Drugs may not be destroyed under subsection (c) to the extent that the Attorney General of the United States determines that the drugs should be preserved as evidence or potential evidence with respect to an offense against the United States.

''(f) RULE OF CONSTRUCTION.—This section may not be construed as having any legal effect on applicable law with respect to a shipment of drugs that is imported or offered for import into the United States and has a declared value equal to or greater than $10,000.''.

(b) PROCEDURES.—Procedures for carrying out section 805 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall be established not later than 90 days after the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

SEC. 1306. WHOLESALE DISTRIBUTION OF DRUGS; STATEMENTS REGARDING PRIOR SALE, PURCHASE, OR TRADE.

(a) STRIKING OF EXEMPTIONS; APPLICABILITY TO REGISTERED EXPORTERS.—Section 503(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e)) is amended—

(1) in paragraph (1)—

(A) by striking ''and who is not the manufacturer or an authorized distributor of record of such drug'';

(B) by striking ''to an authorized distributor of record or''; and

(C) by striking subparagraph (B) and inserting the following:

''(B) The fact that a drug subject to subsection (b) is exported from the United States does not with respect to such drug exempt any person that is engaged in the business of the wholesale distribution of the drug from providing the statement described in subparagraph (A) to the person that receives the drug pursuant to the export of the drug.

''(C)(i) The Secretary shall by regulation establish requirements that supersede subparagraph (A) (referred to in this subparagraph as 'alternative requirements') to identify the chain of custody of a drug subject to subsection (b) from the manufacturer of the drug throughout the wholesale distribution of the drug to a pharmacist who intends to sell the drug at retail if the Secretary determines that the alternative requirements, which may include standardized anti-counterfeiting or track-and-trace technologies, will identify such chain of custody or the identity of the discrete package of the drug from which the drug is dispensed with equal or greater certainty to the requirements of subparagraph (A), and that the alternative requirements are economically and technically feasible.

''(ii) When the Secretary promulgates a final rule to establish such alternative requirements, the final rule in addition shall, with respect to the registration condition established in clause (i) of section 804(c)(3)(B), establish a condition equivalent to the alternative requirements, and such equivalent condition may be met in lieu of the registration condition established in such clause (i).'';

(2) in paragraph (2)(A), by adding at the end the following: ''The preceding sentence may not be construed as having any applicability with respect to a registered exporter under section 804.''; and

(3) in paragraph (3), by striking ''and subsection (d)—'' in the matter preceding subparagraph (A) and all that follows through ''the term 'wholesale distribution' means'' in subparagraph (B) and inserting the following: ''and subsection (d), the term 'wholesale distribution' means''.

(b) CONFORMING AMENDMENT.—Section 503(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(d)) is amended by adding at the end the following:

''(4) Each manufacturer of a drug subject to subsection (b) shall maintain at its corporate offices a current list of the authorized distributors of record of such drug.

''(5) For purposes of this subsection, the term 'authorized distributors of record' means those distributors with whom a manufacturer has established an ongoing relationship to distribute such manufacturer's products.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on January 1, 2012.

(2) DRUGS IMPORTED BY REGISTERED IMPORTERS UNDER SECTION 804.—Notwithstanding paragraph (1), the amendments made by paragraphs (1) and (3) of subsection (a) and by subsection (b) shall take effect on the date that is 90 days after the date of enactment of this Act with respect to qualifying drugs imported under section 804 of the Federal Food, Drug, and Cosmetic Act, as added by section 1304.

(3) EFFECT WITH RESPECT TO REGISTERED EXPORTERS.—The amendment made by subsection (a)(2) shall take effect on the date that is 90 days after the date of enactment of this Act.

(4) ALTERNATIVE REQUIREMENTS.—The Secretary shall issue regulations to establish

the alternative requirements, referred to in the amendment made by subsection (a)(1), that take effect not later than January 1, 2012.

(5) INTERMEDIATE REQUIREMENTS.—The Secretary shall by regulation require the use of standardized anti-counterfeiting or track-and-trace technologies on prescription drugs at the case and pallet level effective not later than 1 year after the date of enactment of this Act.

(6) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, the Secretary shall, not later than 18 months after the date of enactment of this Act, require that the packaging of any prescription drug incorporates—

(i) a standardized numerical identifier unique to each package of such drug, applied at the point of manufacturing and repackaging (in which case the numerical identifier shall be linked to the numerical identifier applied at the point of manufacturing); and

(ii)(I) overt optically variable counterfeit-resistant technologies that—

(aa) are visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

(bb) are similar to that used by the Bureau of Engraving and Printing to secure United States currency;

(cc) are manufactured and distributed in a highly secure, tightly controlled environment; and

(dd) incorporate additional layers of nonvisible convert security features up to and including forensic capability, as described in subparagraph (B); or

(II) technologies that have a function of security comparable to that described in subclause (I), as determined by the Secretary.

(B) STANDARDS FOR PACKAGING.—For the purpose of making it more difficult to counterfeit the packaging of drugs subject to this paragraph, the manufacturers of such drugs shall incorporate the technologies described in subparagraph (A) into at least 1 additional element of the physical packaging of the drugs, including blister packs, shrink wrap, package labels, package seals, bottles, and boxes.

SEC. 1307. INTERNET SALES OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503B the following:

"SEC. 503C. INTERNET SALES OF PRESCRIPTION DRUGS.

''(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

''(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

''(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

''(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

''(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

''(i) are not intended to be accessed by purchasers or prospective purchasers; or

''(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

''(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

''(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

''(i) The name of such person.

''(ii) Each State in which the person is authorized by law to dispense prescription drugs.

''(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

''(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

''(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

''(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words 'licensing and contact information'.

''(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

''(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

''(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

''(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

''(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

''(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to—

''(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

''(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

''(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

''(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

''(3) QUALIFYING MEDICAL RELATIONSHIP.—

''(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

''(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

''(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

''(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

''(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

''(4) RULES OF CONSTRUCTION.—

''(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (e)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

''(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

''(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

''(c) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

''(A) to intervene in such action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the 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.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be

brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(5) ACTIONS BY OTHER STATE OFFICIALS.—

''(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

''(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

''(d) EFFECT OF SECTION.—This section shall not apply to a person that is a registered exporter under section 804.

''(e) GENERAL DEFINITIONS.—For purposes of this section:

''(1) The term 'practitioner' means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

''(2) The term 'prescription drug' means a drug that is described in section 503(b)(1).

''(3) The term 'qualifying medical relationship', with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

''(f) INTERNET-RELATED DEFINITIONS.—

''(1) IN GENERAL.—For purposes of this section:

''(A) The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(B) The term 'link', with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

''(i) to move from viewing one portion of a page on such site to another portion of the page;

''(ii) to move from viewing one page on such site to another page on such site; or

''(iii) to move from viewing a page on one Internet site to a page on another Internet site.

''(C) The term 'page', with respect to the Internet, means a document or other file accessed at an Internet site.

''(D)(i) The terms 'site' and 'address', with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

''(ii) The term 'domain name' means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as '.com', '.edu', '.gov', '.net', or '.org'.

''(iii) The term 'Internet Protocol numbers' includes any successor protocol for determining a specific location on the Internet.

''(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

''(g) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person's selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.

''(h) NO EFFECT ON OTHER REQUIREMENTS; COORDINATION.—The requirements of this section are in addition to, and do not supersede, any requirements under the Controlled Substances Act or the Controlled Substances Import and Export Act (or any regulation promulgated under either such Act) regarding Internet pharmacies and controlled substances. In promulgating regulations to carry out this section, the Secretary shall coordinate with the Attorney General to ensure that such regulations do not duplicate or conflict with the requirements described in the previous sentence, and that such regulations and requirements coordinate to the extent practicable.''.

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

''(l) The dispensing or selling of a prescription drug in violation of section 503C.''.

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503C of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF FEDERAL AND STATE LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of Federal or State laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated $100,000 for each of the first 3 fiscal years in which this section is in effect.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect 90 days after the date of enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

SEC. 1308. PROHIBITING PAYMENTS TO UNREGISTERED FOREIGN PHARMACIES.

(a) IN GENERAL.—Section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end the following:

''(h) RESTRICTED TRANSACTIONS.—

''(1) IN GENERAL.—The introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system is prohibited.

''(2) PAYMENT SYSTEM.—

''(A) IN GENERAL.—The term 'payment system' means a system used by a person described in subparagraph (B) to effect a credit transaction, electronic fund transfer, or money transmitting service that may be used in connection with, or to facilitate, a restricted transaction, and includes—

''(i) a credit card system;

''(ii) an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service; and

''(iii) any other system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic fund transfers, or money transmitting services.

''(B) PERSONS DESCRIBED.—A person referred to in subparagraph (A) is—

''(i) a creditor;

''(ii) a credit card issuer;

''(iii) a financial institution;

''(iv) an operator of a terminal at which an electronic fund transfer may be initiated;

''(v) a money transmitting business; or

''(vi) a participant in an international, national, regional, or local network used to effect a credit transaction, electronic fund transfer, or money transmitting service.

''(3) RESTRICTED TRANSACTION.—The term 'restricted transaction' means a transaction or transmittal, on behalf of an individual who places an unlawful drug importation request to any person engaged in the operation of an unregistered foreign pharmacy, of—

''(A) credit, or the proceeds of credit, extended to or on behalf of the individual for the purpose of the unlawful drug importation request (including credit extended through the use of a credit card);

''(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the individual for the purpose of the unlawful drug importation request;

''(C) a check, draft, or similar instrument which is drawn by or on behalf of the individual for the purpose of the unlawful drug importation request and is drawn on or payable at or through any financial institution; or

''(D) the proceeds of any other form of financial transaction (identified by the Board by regulation) that involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the individual for the purpose of the unlawful drug importation request.

''(4) UNLAWFUL DRUG IMPORTATION REQUEST.—The term 'unlawful drug importation request' means the request, or transmittal of a request, made to an unregistered foreign pharmacy for a prescription drug by mail (including a private carrier), facsimile, phone, or electronic mail, or by a means that involves the use, in whole or in part, of the Internet.

''(5) UNREGISTERED FOREIGN PHARMACY.—The term 'unregistered foreign pharmacy' means a person in a country other than the United States that is not a registered exporter under section 804.

''(6) OTHER DEFINITIONS.—

''(A) CREDIT; CREDITOR; CREDIT CARD.—The terms 'credit', 'creditor', and 'credit card' have the meanings given the terms in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(B) ACCESS DEVICE; ELECTRONIC FUND TRANSFER.—The terms 'access device' and 'electronic fund transfer'—

''(i) have the meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a); and

''(ii) the term 'electronic fund transfer' also includes any fund transfer covered under Article 4A of the Uniform Commercial Code, as in effect in any State.

''(C) FINANCIAL INSTITUTION.—The term 'financial institution'—

''(i) has the meaning given the term in section 903 of the Electronic Transfer Fund Act (15 U.S.C. 1693a); and

''(ii) includes a financial institution (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)).

''(D) MONEY TRANSMITTING BUSINESS; MONEY TRANSMITTING SERVICE.—The terms 'money transmitting business' and 'money transmitting service' have the meaning given the terms in section 5330(d) of title 31, United States Code.

''(E) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(7) POLICIES AND PROCEDURES REQUIRED TO PREVENT RESTRICTED TRANSACTIONS.—

''(A) REGULATIONS.—The Board shall promulgate regulations requiring—

''(i) an operator of a credit card system;

''(ii) an operator of an international, national, regional, or local network used to effect a credit transaction, an electronic fund transfer, or a money transmitting service;

''(iii) an operator of any other payment system that is centrally managed and is primarily engaged in the transmission and settlement of credit transactions, electronic transfers or money transmitting services where at least one party to the transaction or transfer is an individual; and

''(iv) any other person described in paragraph (2)(B) and specified by the Board in such regulations,

to establish policies and procedures that are reasonably designed to prevent the introduction of a restricted transaction into a payment system or the completion of a restricted transaction using a payment system.

''(B) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In promulgating regulations under subparagraph (A), the Board shall—

''(i) identify types of policies and procedures, including nonexclusive examples, that shall be considered to be reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; and

''(ii) to the extent practicable, permit any payment system, or person described in paragraph (2)(B), as applicable, to choose among alternative means of preventing the introduction or completion of restricted transactions.

''(C) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTION.—

''(i) IN GENERAL.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, and any participant in such payment system that prevents or otherwise refuses to honor transactions in an effort to implement the policies and procedures required under this subsection or to otherwise comply with this subsection shall not be liable to any party for such action.

''(ii) COMPLIANCE.—A person described in paragraph (2)(B) meets the requirements of this subsection if the person relies on and complies with the policies and procedures of a payment system of which the person is a member or in which the person is a participant, and such policies and procedures of the payment system comply with the requirements of the regulations promulgated under subparagraph (A).

''(D) ENFORCEMENT.—

''(i) IN GENERAL.—This subsection, and the regulations promulgated under this subsection, shall be enforced exclusively by the Federal functional regulators and the Federal Trade Commission under applicable law in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)).

''(ii) FACTORS TO BE CONSIDERED.—In considering any enforcement action under this subsection against a payment system or person described in paragraph (2)(B), the Federal functional regulators and the Federal Trade Commission shall consider the following factors:

''(I) The extent to which the payment system or person knowingly permits restricted transactions.

''(II) The history of the payment system or person in connection with permitting restricted transactions.

''(III) The extent to which the payment system or person has established and is maintaining policies and procedures in compliance with regulations prescribed under this subsection.

''(8) TRANSACTIONS PERMITTED.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, is authorized to engage in transactions with foreign pharmacies in connection with investigating violations or potential violations of any rule or requirement adopted by the payment system or person in connection with complying with paragraph (7). A payment system, or such a person, and its agents and employees shall not be found to be in violation of, or liable under, any Federal, State or other law by virtue of engaging in any such transaction.

''(9) RELATION TO STATE LAWS.—No requirement, prohibition, or liability may be imposed on a payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, under the laws of any state with respect to any payment transaction by an individual because the payment transaction involves a payment to a foreign pharmacy.

''(10) TIMING OF REQUIREMENTS.—A payment system, or a person described in paragraph (2)(B) that is subject to a regulation issued under this subsection, must adopt policies and procedures reasonably designed to comply with any regulations required under paragraph (7) within 60 days after such regulations are issued in final form.

''(11) COMPLIANCE.—A payment system, and any person described in paragraph (2)(B), shall not be deemed to be in violation of paragraph (1)—

''(A)(i) if an alleged violation of paragraph (1) occurs prior to the mandatory compliance date of the regulations issued under paragraph (7); and

''(ii) such entity has adopted or relied on policies and procedures that are reasonably designed to prevent the introduction of restricted transactions into a payment system or the completion of restricted transactions using a payment system; or

''(B)(i) if an alleged violation of paragraph (1) occurs after the mandatory compliance date of such regulations; and

''(ii) such entity is in compliance with such regulations.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day that is 90 days after the date of enactment of this Act.

(c) IMPLEMENTATION.—The Board of Governors of the Federal Reserve System shall promulgate regulations as required by subsection (h)(7) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333), as added by subsection (a), not later than 90 days after the date of enactment of this Act.

SEC. 1309. IMPORTATION EXEMPTION UNDER CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.

Section 1006(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 956(a)(2)) is amended by striking ''not import the controlled substance into the United States in an amount that exceeds 50 dosage units of the controlled substance.'' and inserting ''import into the United States not more than 10 dosage units combined of all such controlled substances.''.

SEC. 1310. SEVERABILITY.

If any provision of this title, an amendment by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SA 4033. Mr. BROWN of Massachusetts 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. ___. COMMISSION ON ECONOMIC SECURITY.

(a) FINDINGS.—Congress finds that—

(1) the recent financial crisis could serve as a road map for actors seeking to destabilize economic systems;

(2) the economy's growing interconnectedness increases vulnerabilities;

(3) the ability of malevolent actors to rapidly network and mask their activities undermines the fundamentals of the financial markets and economy;

(4) as it is reported that a recent war game of the Department of Defense—

(A) exposed the seriousness of threats to our economy;

(B) was won by a group representing the Government of China; and

(C) indicated a significant lack of understanding of these issues across the divides between the national security and financial communities;

(5) a leading financial executive recently noted that the financial crisis, sparked by the September 15th, 2008, collapse of Lehman Brothers, could serve as a road map for actors seeking to destabilize economic systems;

(6) prominent counterterrorism expert Professor Bruce Hoffman of Georgetown University has stated that al Qaeda and other terrorists groups were devoting new attention to derailing our financial system in the wake of that crisis;

(7) foreign governments have developed economic warfare capabilities or organizations, such as an economic warfare bureau in China; and

(8) former Directors of National Intelligence and other top experts have warned of

cyber-security and other threats capable of disrupting our financial institutions or critical infrastructure, such as the national power grid.

(b) ESTABLISHMENT.—There is established a commission to be known as the ''Security Threats to Financial Markets and Economic Recovery Commission'' (referred to in this section as the ''Commission'').

(c) DUTIES OF COMMISSION.—

(1) MANDATORY LEGISLATIVE RECOMMENDATIONS.—The Commission shall examine the threats and vulnerabilities to the United States financial markets and to develop legislative recommendations designed to address—

(A) potential threats to financial markets and economies from state actors and non-state actors;

(B) vulnerabilities in financial markets with substantial economic implications;

(C) the divide between national security concerns and economic concerns; and

(D) national security vulnerabilities associated with current Federal debt levels.

(2) POLICY SOLUTIONS.—Legislative recommendations developed to address the issues described in paragraph (1) may include—

(A) reforms necessary to address gaps in government and private capabilities to combat threats to financial markets;

(B) reforms that strengthen the security of financial markets;

(C) reforms that address financial systemic weakness; and

(D) any other reforms designed to address the issues described in paragraph (1).

(d) REPORT.—

(1) IN GENERAL.—The Commission shall, not later than September 5, 2010, submit an interim report to Congress and, not later than 1 year after the date of the enactment of this Act, shall submit a full report to Congress and the President containing—

(A) a detailed description of the activities of the Commission;

(B) a detailed statement of any findings of the Commission as to public preferences regarding the issues, policies, and tradeoffs presented in the town hall style public hearings;

(C) a list of policy options for addressing those problems; and

(D) criteria for the legislative recommendations to be developed by the Commission.

(2) FORM.—The reports submitted under paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.

(e) LEGISLATIVE RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than 60 days after the date on which the full report is submitted under subsection (d)(1) and by a vote of at least 10 of the members, the Commission shall submit legislative recommendations to Congress and the President designed to address the issues described in subsection (c).

(2) PROPOSAL REQUIREMENTS.—The proposal under paragraph (1) shall, to the extent feasible, be designed—

(A) to achieve financial market and systemic security;

(B) to address the comments and suggestions of the consulted non-governmental experts and government officials; and

(C) to meet the criteria set forth in the Commission report.

(f) MEMBERSHIP AND MEETINGS.—

(1) MEMBERSHIP.—

(A) IN GENERAL.—The Commission shall be composed of 12 voting members appointed pursuant to subparagraph (B) and 3 non-voting members described in subparagraph (C).

(B) VOTING MEMBERS.—The Commission shall be composed of 12 voting members, of whom not fewer than 4 members should be currently in the private sector, or have significant experience in the private sector, of whom—

(i) 3 shall be appointed by the Speaker of the House of Representatives;

(ii) 3 shall be appointed by the minority leader of the House of Representatives;

(iii) 3 shall be appointed by the majority leader of the Senate; and

(iv) 3 shall be appointed by the minority leader of the Senate.

(C) EXECUTIVE BRANCH CONSULTATION.—The Director of National Intelligence, the Secretary, and the Chairman of the Board of Governors shall advise and assist the Commission, at the request of the Commission.

(D) CHAIR AND CO-CHAIR.—The Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall designate 2 co-chairpersons of the Commission from the members appointed under subparagraph (B), one of whom must be a Republican and one of whom must be a Democrat.

(2) LIMITATIONS AS TO MEMBERS OF CONGRESS.—

(A) MEMBERS OF CONGRESS ON COMMISSION.—Each appointing authority described in paragraph (1)(B) shall appoint not more than 2 Members of Congress, nor fewer than 1 member of Congress, to the Commission.

(B) CONTINUATION OF VOTING MEMBERSHIP.—In the case of an individual appointed pursuant to paragraph (1)(A) who was appointed as a Member of Congress under subparagraph (A), if such individual ceases to be a Member of Congress, that individual shall cease to be a member of the Commission.

(3) DATE FOR ORIGINAL APPOINTMENT.—The appointing authorities described in paragraph (1)(B) shall appoint the initial members of the Commission not later than 30 days after the date of enactment of this Act.

(4) TERMS.—

(A) IN GENERAL.—The term of each member is for the life of the Commission.

(B) VACANCIES.—A vacancy in the Commission shall be filled not later than 30 days after such vacancy occurs and in the manner in which the original appointment was made.

(5) PAY AND REIMBURSEMENT.—

(A) NO COMPENSATION FOR MEMBERS OF COMMISSION.—Except as provided in subparagraph (B), a member of the Commission may not receive pay, allowances, or benefits by reason of their service on the Commission.

(B) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence under subchapter I of chapter 57 of title 5, United States Code.

(6) MEETINGS.—The Commission shall meet upon the call of the chairperson or a majority of its voting members.

(7) QUORUM.—Six voting members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) STAFF OF COMMISSION.—

(1) STAFF.—In accordance with rules agreed upon by the Commission, subject to paragraph (2), and to the extent provided in advance in appropriation Acts, the co-chairpersons of the Commission may appoint and fix the pay of no more than 3 staff persons, subject to paragraph (3).

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(3) COMPENSATION.—A staff person of the Commission may not be paid at a rate of pay that exceeds the maximum rate of pay for a position at GS–14 of the General Schedule.

(4) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of their regular employment without interruption.

(5) EXPERTS AND CONSULTANTS.—In accordance with rules agreed upon by the Commission and to the extent provided in advance in appropriation Acts, the director may procure the services of experts and consultants under section 3109(b) of title 5, United States Code, but at rates not to exceed the daily equivalent of the annual rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(h) POWERS OF COMMISSION.—

(1) HEARINGS AND EVIDENCE.—The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this subsection.

(3) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(5) CONTRACT AUTHORITY.—To the extent provided in advance in appropriation Acts, the Commission may enter into contracts to enable the Commission to discharge its duties under this section.

(i) FUNDING.—There are authorized to be appropriated to the Commission, such sums as may be necessary to carry out this section. Funding for the Commission shall be provided through discretionary appropriations.

(j) TERMINATION.—The Commission shall terminate 60 days after the date of submission of its legislative proposal to Congress under this section.

SA 4034. 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 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 4035. 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 525, between lines 9 and 10, insert the following:

SEC. 719. PROHIBITION ON REGISTRATION, DESIGNATION, OR APPROVAL.

(a) PROHIBITION.—Neither the Commodity Futures Trading Commission nor the Securities and Exchange Commission may register, designate, approve, or otherwise permit an entity to operate within the United States as one or more of the following, if that entity has been, plans to be, or later is established outside the United States, in whole or in part, in a manner which permits that entity to avoid or assist others to avoid the payment of United States taxes—

(1) a derivatives clearing organization;

(2) a swap execution facility;

(3) a board of trade as a contract market under section 5 of the Commodity Exchange Act (7 U.S.C. 7);

(4) a clearing agency;

(5) a security-based swap execution facility; or

(6) an exchange as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(b) DEFINITIONS.—For purposes of this section, the terms ''derivatives clearing organization,'' ''swap execution facility'' and ''board of trade'' have the meanings given the terms in Section1a of the Commodity Exchange Act (7 U.S.C. 1a), and the terms ''clearing agency'', ''security-based swap execution facility'', and ''exchange'' have the meanings given the terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

SA 4036. Mr. BENNETT 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 431, line 22, strike ''3'' and insert ''2''.

SA 4037. Mr. BOND (for himself, Mr. WARNER, Mr. BROWN of Massachusetts, 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 387, strike line 13 and all that follows through page 388, line 3, and insert the following:

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, the net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

On page 388, line 14, strike ''1 year'' and insert ''3 years''.

On page 998, strike line 12 and all that follows through page 1001, line 25, and insert the following:

SEC. 926. DISQUALIFYING FELONS AND OTHER "BAD ACTORS" FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offering statement; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SA 4038. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Transportation Safety Board Reauthorization Act of 2010''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 1118(a) of title 49, United States Code, is amended to read as follows:

''(a) IN GENERAL.—There are authorized to be appropriated for the purposes of this chapter $98,050,000 for fiscal year 2011 and $98,050,000 for fiscal year 2012. Such sums shall remain available until expended.''.

(b) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—Section 1118(c) of such title is amended to read as follows:

''(c) FEES, REFUNDS, REIMBURSEMENTS, AND ADVANCES.—

''(1) IN GENERAL.—The Board may impose and collect such fees, refunds, reimbursements, and advances as it determines to be appropriate for activities, services, and facilities provided by or through the Board.

''(2) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee, refund, reimbursement, or advance collected under this subsection—

''(A) shall be credited as offsetting collections to the account that finances the activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated;

''(B) shall be available for expenditure only to pay the costs of activities, services, or facilities for which the fee, refund, reimbursement, or advance is associated; and

''(C) shall remain available until expended.

''(3) RECORD.—The Board shall maintain an annual record of collections received under paragraph (2).

''(4) REFUNDS.—The Board may refund any fee or advance paid by mistake or any amount paid in excess of that required.''.

SEC. 3. TECHNICAL CORRECTIONS.

(a) DEFINITIONS.—Section 1101 of title 49, United States Code, is amended by striking ''otherwise.'' and inserting ''otherwise, and may include incidents not involving destruction or damage, but significantly affecting transportation safety, as the Board may prescribe or Congress may direct.''.

(b) GENERAL ORGANIZATION.—Section 1111(d) of title 49, United States Code, is

amended by striking ''absent'' and inserting ''unavailable''.

(c) ADMINISTRATIVE.—Section 1113 of title 49, United States Code, is amended—

(1) by inserting ''or depositions'' in paragraph (a)(1) after ''hearings''; and

(2) by inserting ''In the interest of transportation safety, the Board shall have the authority by subpoena to summon witnesses and obtain any and all evidence relevant to an accident investigation conducted under this chapter.'' after ''(2)'' in subsection (a)(2).

(d) DISCLOSURE, AVAILABILITY, AND USE OF INFORMATION.—Section 1114 of title 49, United States Code, is amended—

(1) by striking the heading for subsection (b) and inserting ''(b) TRADE SECRETS; COMMERCIAL OR FINANCIAL INFORMATION.—'';

(2) by inserting ''submitted to the Board in the course of a Board investigation or study and'' in subsection (b)(1) after ''information'' the first place it appears;

(3) by striking ''title 18'' in subsection (b)(1) and inserting ''title 18, or commercial or financial information,'';

(4) by striking ''safety'' in subsection (b)(1)(D) the first place it appears and inserting ''safety, including through the issuance of reports of accident investigation or safety studies and safety recommendations,'';

(5) by inserting ''subparagraphs (A) through (C) of'' after ''under'' in subsection (b)(2);

(6) by adding at the end of subsection (b) the following:

''(4) Each person submitting to the Board trade secrets, commercial or financial information, or information that could be classified as controlled under the International Traffic in Arms Regulations shall appropriately annotate the information to indicate the restricted nature of the information in order to facilitate proper handling of such materials by the Board.'';

(7) by striking ''shall'' in paragraph(1)(A) of subsection (f) and inserting ''may'';

(8) by striking ''information'' in paragraph (2) of subsection (f) and inserting ''information, or other relevant information authorized for disclosure under this chapter,''; and

(9) by adding at the end thereof the following:

''(g) ONGOING BOARD INVESTIGATIONS.—(1) Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, may publicly disclose records related to an ongoing Board investigation, and such records shall be exempt from disclosure under section 552(b)(3) of title 5. Notwithstanding the preceding sentence, the Board may make public specific records relevant to the investigation, release of which in the Board's judgment is necessary to promote transportation safety—

''(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing;

''(B) if the Board does not hold a public hearing, at the time the Board determines that substantial portions of the underlying factual reports on the accident or incident, and supporting evidence, will be placed in the public docket; or

''(C) if the Board determines during an ongoing investigation or study that circumstances warrant disclosure of specific factual material and that such material need be placed in the public docket to facilitate dialogue with other agencies or instrumentalities, regulatory bodies, industry or industry groups, or Congress.

''(2) This subsection does not prevent the Board from referring at any time to evidence from an ongoing investigation in making safety recommendations.

''(3) In this subsection, the term 'ongoing investigation' means that period beginning at the time the Board is notified of an accident or incident and ending when the Board issues a final report or brief, or determines to close an investigation without issuing a report or brief.''.

(e) REPORTS AND STUDIES—Section 1116(b) of title 49, United States Code, is amended—

(1) by striking ''carry out'' in paragraph (1) and inserting ''conduct''; and

(2) by striking paragraph (3) and inserting the following:

''(3) prescribe requirements for persons reporting accidents and incidents that may be investigated by the Board under this chapter;''.

(f) DISCOVERY AND USE OF COCKPIT AND SURFACE VEHICLE RECORDINGS AND TRANSCRIPTS.—Section 1154(a)(1)(A) of title 49, United States Code, is amended by striking ''and'' and inserting ''or''.

SEC. 4. AUTHORITY OF THE BOARD.

(a) EVALUATION AND AUDIT.—Section 1138(a) of title 49, United States Code, is amended by striking ''conducted at least annually, but may be''.

(b) TRAINING OF BOARD EMPLOYEES AND OTHERS.—Section 1115(d) of title 49, United States Code, is amended—

(1) by striking ''investigation.'' and inserting ''investigation, including investigation theory and techniques and transportation safety, to advance Board safety recommendations.'';

(2) by striking ''training.'' and inserting ''training or who influence transportation safety through support or adoption of Board safety recommendations.''; and

(3) by striking ''collections.'' and inserting ''collections under the provisions of section 1118 of this chapter.''.

(c) ACCIDENT INVESTIGATION AUTHORITY.—Section 1131 of title 49, United States Code, is amended—

(1) by striking subsection (a)(1)(C) and inserting the following:

''(C) a freight or passenger railroad accident in which there is a fatality (other than a fatality involving a trespasser), substantial property damage, or significant injury to the environment;'';

(2) by striking ''and'' after the semicolon in subsection (a)(1)(E);

(3) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(1)(F);

(4) by striking ''chapter.'' in subsection (a)(1)(F) and inserting ''chapter;'';

(5) by adding at the end of subsection (a)(1) the following:

''(G) an accident or incident in response to an international request and delegation under appropriate international conventions, coordinated through the Department of State and accepted by the Board; and

''(H) an incident or incidents significantly affecting transportation safety, as defined by the Board, under rules and in such detail as the Board may prescribe.'';

(6) by inserting ''or incident'' after ''accident'' each place it appears in subsection (a)(3);

(7) by inserting ''or relevant to'' after ''developed about'' in subsection (a)(3);

(8) by inserting ''AND INCIDENT'' after ''ACCIDENT'' in the heading for subsection (e); and

(9) by inserting ''and incident'' in subsection (e) after ''each accident''.

(d) CIVIL AIRCRAFT AND MARITIME ACCIDENT INVESTIGATIONS.—

(1) IN GENERAL.—Section 1132 of title 49, United States Code, is amended—

(A) by inserting ''or have investigated'' in subsection (a)(1) after ''investigate'';

(B) by striking ''aircraft;'' in subsection (a)(1)(A) and inserting ''aircraft or a commercial space launch vehicle;''; and

(C) by adding at the end the following:

''(e) AUTHORITY OF BOARD REPRESENTATIVE.—The Board may, with the consent of the Secretary, delegate to the Department of Transportation full authority to obtain the facts of any aviation accident or incident the Board shall investigate, and the on-scene representative of the Secretary shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where an aviation accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.

''(f) MARITIME ACCIDENT INVESTIGATIONS.—The Board may, with the consent of the Secretary of the department in which the Coast Guard is operating, delegate to the Coast Guard full authority to obtain the facts of any maritime accident or incident the Board shall investigate, and the on-scene representative of the Commandant of the Coast Guard shall have the full authority of the Board to, on display of appropriate credentials and written notice of inspection authority, enter property where a maritime accident has occurred or wreckage from the accident is located and do anything necessary to gather evidence in support of a Board investigation, in accordance with such rules as the Board may prescribe.''.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 1132 of title 49, United States Code, is amended to read as follows:

''§ 1132. Civil aircraft and maritime accident investigations''.

(B) The table of contents for chapter 11 of title 49, United States Code, is amended by striking the item relating to section 1132 and inserting the following:

''1132. Civil aircraft and maritime accident investigations''.

(e) INSPECTIONS AND AUTOPSIES.—Section 1134 of title 49, United States Code, is amended—

(1) by striking ''officer or employee of the National Transportation Safety Board—'' in subsection (a) and inserting ''officer, employee, or designee of the National Transportation Safety Board in the conduct of any accident or incident investigation or study—'';

(2) by adding at the end of subsection (b)(1) the following: ''The Board may download or seize any recording device and recordings and may require specific information only available from the manufacturer to enable the Board to read and interpret any flight parameter or navigation storage device or media on board the accident aircraft. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''; and

(3) by inserting after ''component.'' in subsection (c) the following: ''The officer or employee may download or seize any recording device and recordings, and may require the production of specific information only available from the manufacturer to enable the Board to read and interpret any operational parameter or navigation storage device or media on board the accident vehicle, vessel, or rolling stock. The provisions of section 1114(b) of this chapter shall apply to matters properly identified as trade secrets or commercial or financial information.''.

SEC. 5. AVIATION PENALTIES AND FAMILY ASSISTANCE.

(a) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS.—Section 41113(b)(7) of title 49, United States Code, is amended by striking ''months.'' and inserting ''months

and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

(b) FAMILY ASSISTANCE IN COMMERCIAL AVIATION ACCIDENTS INVOLVING FOREIGN CARRIERS.—Section 41313(c)(7) of title 49, United States Code, is amended by striking ''accident.'' and inserting ''accident and that, prior to destruction of unclaimed possessions, a reasonable attempt will be made to notify the family of each passenger within 60 days of any planned destruction date.''.

SEC. 6. ACCIDENT-RELATED INFORMATION RELEASE POLICY REPORT.

Within 180 days after the date of enactment of this Act, the National Transportation Safety Board shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report describing the policies, procedures, and guidelines used by the Board in the expedited release of factual accident-related information to victims and their families, Federal, State, and local accident investigators and agencies, private or third party investigation partners, the public, and other stakeholders.

SA 4039. Mr. DORGAN (for Mr. DODD (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2768, to amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes; as follows:

Amend the title so as to read ''A Bill To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2011 and 2012, and for other purposes.''

SA 4040. Mrs. MCCASKILL (for herself and Mr. GRASSLEY) submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, insert the following:

SEC. 122. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 4041. 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 392, between lines 22 and 23, insert the following:

''(G) to coordinate with other Federal agencies (including the Federal Emergency Management Agency), States (including State insurance regulators), and insurance companies efforts to facilitate the timely processing of flood insurance claims by insurance companies and agents (including through recommending best practices such as telephone hotlines for victims or deployment of personnel of the Office to flood areas) in any area for which the President declares a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) relating to flooding; and

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AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on May 13, 2010, at 2:30 p.m.

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

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on May 13, 2010, at 10 a.m., in room 215 of the Dirksen Senate Office Building.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on May 13, 2010, at 9:30 a.m. in room 628 of the Dirksen Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Judiciary be authorized to meet during the session of the Senate on May 13, 2010, at 10 a.m., in SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on May 13, 2010, at 2:30 p.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Nominations.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Intelligence be authorized to meet during the session of the Senate on May 13, 2010, at 2:30 p.m.

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

VIRGIN ISLAND NATIONAL PARK LEASE ACT

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 296, H.R. 714, the Virgin Islands National Park.

The PRESIDING OFFICER. The clerk will report the bill by title.

and cancer caused by the hepatitis B and C viruses have become urgent problems of global proportions;

Whereas an estimated 2,000,000,000 people worldwide have been infected with the hepatitis B virus, and as many as 400,000,000 people worldwide live with chronic hepatitis B infection;

Whereas an estimated 600,000 people worldwide die each year due to a hepatitis B infection;

Whereas an estimated 170,000,000 people worldwide live with chronic hepatitis C infection, and an estimated 3,500,000 people are newly infected with hepatitis C each year;

Whereas an estimated 1,700,000 people worldwide die each year due to liver failure or primary liver cancer from chronic hepatitis C infection;

Whereas infection with the hepatitis B and C viruses is a growing health crisis in the United States, and an estimated 5,300,000 people in the United States are chronically infected with the hepatitis B or C virus;

Whereas each year in the United States, an estimated 43,000 people are newly infected with the hepatitis B virus and 17,000 people are newly infected with the hepatitis C virus;

Whereas approximately 65 percent and 75 percent of the people infected with hepatitis B and hepatitis C virus, respectively, are unaware of the infection;

Whereas, because of the asymptomatic nature of the hepatitis B and C viruses, a person who has become chronically infected with 1 of the viruses may not have symptoms for up to 40 years after the initial infection has occurred;

Whereas many people are unaware that they have been infected with the hepatitis B or C virus until years later, when symptoms of liver cancer or liver disease develop;

Whereas, as a result of late diagnosis, approximately 15,000 people die each year from liver disease or liver cancer related to chronic viral hepatitis;

Whereas hepatitis C claims roughly 12,000 lives each year in the United States, and the overall rate of hepatitis C-related deaths in the United States is expected to triple by 2019;

Whereas, in the United States, African-Americans, Asian Americans, Pacific Islanders, Latinos, Native Americans, Alaskan Natives, gay and bisexual men, and persons who inject drugs have higher rates of chronic viral hepatitis infection;

Whereas 1/3 of HIV-positive people in the United States are co-infected with the hepatitis C virus, and 1/10 of HIV-positive people in the United States are co-infected with the hepatitis B virus;

Whereas, although life expectancies for HIV-positive persons have increased with therapy, liver disease, mostly related to hepatitis B or C infections, has become the most common non-AIDS-related cause of death among HIV-positive persons;

Whereas chronic hepatitis B and C infections cost the United States $16,000,000,000 each year;

Whereas, despite the fact that chronic viral hepatitis is the most common bloodborne infection in the United States, no routine or universal screening is in place for early detection as of the date of the agreement to this resolution;

Whereas, in 2010, the Institute of Medicine issued a report on chronic viral hepatitis, which attributed the lack of knowledge and awareness among the public and health providers of the United States of chronic viral hepatitis, the large health disparities for people infected with chronic viral hepatitis, and the current morbidity and mortality rate for people infected with chronic viral hepatitis, to the lack of dedicated resources for chronic viral hepatitis;

Whereas the first World Hepatitis Day on May 19, 2008, raised awareness about the need for action, compassion, and understanding about chronic viral hepatitis around the world; and

Whereas the goals of World Hepatitis Day and National Hepatitis Awareness Month are—

(1) to highlight the global nature of the chronic viral hepatitis epidemic;

(2) to recognize the need for a comprehensive public education and awareness campaign designed to help infected patients and the physicians of patients to identify and manage the secondary consequences of the disease; and

(3) to help increase the length and quality of life for individuals diagnosed with chronic hepatitis B or C infections: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of World Hepatitis Day and National Hepatitis Awareness Month;

(2) promotes raising awareness of the risks and consequences of undiagnosed chronic hepatitis B or hepatitis C infections; and

(3) urges a robust governmental and public health response to protect the health of the more than 5,000,000 people in the United States and nearly 600,000,000 people worldwide who suffer from chronic viral hepatitis.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4042. Ms. COLLINS (for herself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4043. Mr. DODD (for Mr. LIEBERMAN) proposed an amendment to the bill H.R. 2711, to amend title 5, United States Code, to provide for the transportation and moving expenses for the immediate family of certain Federal employees who die in the performance of their duties.

SA 4044. Mr. DODD (for Mr. LIEBERMAN) proposed an amendment to the bill H.R. 2711, supra.

SA 4045. Ms. STABENOW (for herself, Mr. HATCH, Mr. BENNETT, 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.

SA 4046. Mr. LEAHY 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 4047. Mr. LEAHY 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 4042. Ms. COLLINS (for herself and Mr. VOINOVICH) 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 988, line 15, insert '', unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the Federal Government, in which case the individual shall only bring an action under section 1221 of title 5, United States Code'' before the period.

SA 4043. Mr. DODD (for Mr. LIEBERMAN) proposed an amendment to the bill H.R. 2711, to amend title 5, United States Code, to provide for the transportation and moving expenses for the immediate family of certain Federal employees who die in the performance of their duties; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Special Agent Samuel Hicks Families of Fallen Heroes Act''.

SEC. 2. TRANSPORTATION AND MOVING EXPENSES FOR IMMEDIATE FAMILY OF CERTAIN DECEASED FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subchapter II of chapter 57 of title 5, United States Code, is amended by inserting after section 5724c the following:

''§ 5724d. Transportation and moving expenses for immediate family of certain deceased Federal employees

''(a) IN GENERAL.—Under regulations prescribed by the President, the head of the agency concerned (or a designee) may determine that a covered employee died as a result of personal injury sustained while in the performance of the employee's duty and authorize or approve the payment by the agency, from Government funds, of—

''(1) any qualified expense of the immediate family of the covered employee attributable to a change in their place of residence, if the place where the immediate family will reside following the death of the employee is—

''(A) different from the place where the immediate family resided at the time of the employee's death; and

''(B) within the United States; and

''(2) any expense of preparing and transporting the remains of the deceased to—

''(A) the place where the immediate family will reside following the death of the employee; or

''(B) such other place appropriate for interment as is determined by the agency head (or designee).

''(b) NO DUPLICATE PAYMENT OF EXPENSES.—No expenses may be paid under this section if those expenses are paid from Government funds under section 5742 or any other authority.

''(c) DEFINITIONS.—For purposes of this section—

''(1) the term 'covered employee' means—

''(A) a law enforcement officer, as defined in section 5541;

''(B) any employee in or under the Federal Bureau of Investigation who is not described in subparagraph (A); and

''(C) a customs and border protection officer, as defined in section 8331(31); and

''(2) the term 'qualified expense', as used with respect to an immediate family changing its place of residence, means the transportation expenses of the immediate family, the expenses of moving (including transporting, packing, crating, temporarily storing, draying, and unpacking) the household goods and personal effects of such immediate family, not in excess of 18,000 pounds net weight, and, when authorized or approved by the agency head (or designee), the transportation of 1 privately owned motor vehicle.''.

(b) NO RELEVANCE AS TO COMPENSATION CLAIMS.—No determination made under section 5724d of title 5, United States Code, shall be deemed relevant to or be considered in connection with any claim for compensation under chapter 81 of that title or under any other law under which compensation may be provided on account of death or personal injury, nor shall any determination made with respect to any such claim be deemed relevant to or be considered in connection with any request for payment of expenses under such section 5724d.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5724c the following:

''Sec. 5724d. Transportation and moving expenses for immediate family of certain deceased Federal employees.''.

SA 4044. Mr. DODD (for Mr. LIEBERMAN) proposed an amendment to the bill H.R. 2711, to amend title 5, United States Code, to provide for the transportation and moving expenses for the immediate family of certain Federal employees who die in the performance of their duties; as follows:

Amend the title so as to read: ''An Act to amend title 5, United States Code, to provide for the transportation and moving expenses for the immediate family of certain Federal employees who die in the performance of their duties.''.

SA 4045. Ms. STABENOW (for herself, Mr. HATCH, Mr. BENNETT, 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 431, strike lines 14 through 20 and insert the following:

(ii) results from—

(I) the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency; or

(II) an acquisition of voting shares in a publicly traded holding company of a industrial bank if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert)—

(aa) holds less than 25 percent of the voting shares of the company; and

(bb) has obtained all regulatory approvals required for such change of control under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and any applicable State law.

SA 4046. Mr. LEAHY 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 749, line 17 strike all through page 752, line 11, and insert the following:

''(2) PROHIBITION OF DISCLOSURE OF IDENTITY.—

''(A) IN GENERAL.—Except as provided in paragraph (B) of this subsection, or with the written consent of the whistleblower, the Commission may not disclose the name, identity or identifying information about the whistleblower who has provided information to the Commission.

''(B) NOTICE AND APPLICABILITY TO OTHER GOVERNMENT AGENCIES AND FOREIGN AUTHORITIES.—Whenever the Commission makes a disclosure to other agencies and foreign authorities, it shall provide reasonable advance notice to the whistleblower if disclosure of that person's identity or identifying information is to occur. Any entity that receives such as disclosure shall protect the whistleblower's confidentiality in accordance with this subsection.

SA 4047. Mr. LEAHY 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 990, line 7, strike all through page 993, line 7, and insert the following:

''(2) PROHIBITION OF DISCLOSURE OF IDENTITY.—

''(A) IN GENERAL.—Except as provided in paragraph (B), or with the written consent of the whistleblower, the Commission may not disclose the name, identity or identifying information about the whistleblower who has provided information to the Commission.

''(B) NOTICE AND APPLICABILITY TO OTHER GOVERNMENT AGENCIES AND FOREIGN AUTHORITIES.—Whenever the Commission makes a disclosure to other agencies and foreign authorities, it shall provide reasonable advance notice to the whistleblower if disclosure of that person's identity or identifying information is to occur. Any entity that receives such as disclosure shall protect the whistleblower's confidentiality in accordance with this subsection.

SPECIAL AGENT SAMUEL HICKS FAMILIES OF FALLEN HEROES ACT

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 234, H.R. 2711.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 2711) to amend title 5, United States Code, to provide for the transportation of the dependents, remains, and effects of certain Federal employees who die while performing official duties or as a result of the performance of official duties.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

H.R. 2711

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 ''Special Agent Samuel Hicks Families of Fallen Heroes Act''.

SEC. 2. TRANSPORTATION OF DEPENDENTS, REMAINS, AND EFFECTS OF CERTAIN FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subchapter II of chapter 57 of title 5, United States Code, is amended by inserting after section 5724c the following:

''§ 5724d. Transportation of dependents, remains, and effects of certain Federal employees

''(a) IN GENERAL.—Under regulations prescribed under section 5738 and when the head of the agency concerned (or a designee thereof) authorizes or approves, if a covered employee dies while performing official duties or as a result of the performance of official duties, the agency may pay from Government funds—

''(1) the qualified expenses of the immediate family of the employee, if the place where the family will reside following the death of the employee is—

''(A) different from the place where the family resided at the time of the employee's death; and

''(B) within the United States; and

''(2) the expenses of preparing and transporting the remains of the deceased to—

''(A) the place where the immediate family will reside following the death of the employee; or

''(B) such other place, appropriate for interment, as is determined by the agency head (or designee).

''(b) QUALIFIED EXPENSES.—For purposes of this section, the term 'qualified expenses', as used with respect to a family changing its place of residence, means the moving expenses, transportation expenses, and relocation expenses of the family which are attributable to the change in place of residence.

''(c) DEFINITIONS.—For purposes of this section—

''(1) the term 'covered employee' means—

SENATE RESOLUTION 533—RECOGNIZING NATIONAL FOSTER CARE MONTH AS AN OPPORTUNITY TO RAISE AWARENESS ABOUT THE CHALLENGES OF CHILDREN IN THE FOSTER CARE SYSTEM AND ENCOURAGING CONGRESS TO IMPLEMENT POLICY TO IMPROVE THE LIVES OF CHILDREN IN THE FOSTER CARE SYSTEM

Ms. LANDRIEU (for herself, Mr. GRASSLEY, Mrs. LINCOLN, Mr. LEVIN, Mr. CARDIN, Mr. BEGICH, Mr. KERRY, Mr. INHOFE, Ms. COLLINS, Ms. SNOWE, Mr. BAYH, Mr. FRANKEN, Mr. AKAKA, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. NELSON of Nebraska, Mr. CASEY, Mrs. BOXER, Mr. SPECTER, Mr. COCHRAN, and Mr. LAUTENBERG) submitted the following resolution; which was considered and agreed to:

S. RES. 533

Whereas all children deserve a safe, loving, and permanent home;

Whereas approximately 500,000 children in the United States live in foster care each year;

Whereas children enter the foster care system for a variety of reasons, including inadequate care, abuse, or neglect by a parent or guardian;

Whereas the major factors that contribute to the placement of a child in the foster care system include substance abuse, mental illness, poverty, and a lack of education of a parent or guardian of the child;

Whereas a child entering the foster care system must confront the widespread misperception that children in foster care are disruptive, unruly, and dangerous, even though placement in the foster care system is based on the actions of a parent or guardian, not the child;

Whereas States and communities should be provided with the resources to invest in preventative and reunification services and post-permanency programs to ensure that more children in the foster care system are provided safe, loving, permanent placements;

Whereas the foster care system is intended to be a temporary solution, yet children remain in the foster care system for an average of 3 years;

Whereas children of color are disproportionately represented in the foster care system and are less likely to be reunited with their biological families;

Whereas the average child in the foster care system—

(1) is 10 years old; and

(2) will be placed in 3 different homes, leading to disruptive transfers to new schools, separation from siblings, and unfamiliar surroundings;

Whereas most children ''age out'' of the foster care system at the age of 18;

Whereas the number of children who enter the foster care system each year has declined over the decade preceding the date of the agreement to this resolution, but the number of children who ''age out'' of the foster care system without placement with a permanent family has increased substantially, rising from 20,000 children in 2002 to 29,000 children in 2008;

Whereas children who ''age out'' of the foster care system lack the security or support of a biological or adoptive family and frequently struggle to secure affordable housing, obtain health insurance, pursue higher education, and acquire adequate employment;

Whereas, of the children who have ''aged out'' of the foster care system—

(1) 25 percent have been homeless;

(2) 51 percent have been unemployed for significant stretch of time, and

(3) only 2 percent have obtained a bachelor's degree or higher;

Whereas, by age 19, approximately 50 percent of young women who have been in the foster care system have been pregnant, compared to only 20 percent of young women who have been not in the foster care system;

Whereas research reveals that children born to teen parents are exposed to serious and high risks;

Whereas National Foster Care Month is an opportunity to raise awareness about the special needs of children in the foster care system and to recognize the important role that foster parents, social workers, and advocates have in the lives of children in foster care throughout the United States;

Whereas the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110–351; 122 Stat. 3949) provides for new investments and services to improve the outcomes of children and families in the foster care system; and

Whereas much remains to be done to ensure that all children have a safe, loving, nurturing, and permanent family, regardless of age or special needs: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes National Foster Care Month as an opportunity to raise awareness about the challenges of children in the foster care system;

(2) encourages Congress to implement policy to improve the lives of children in the foster care system;

(3) supports the designation of a ''National Foster Care Month'';

(4) acknowledges the needs of the children in the foster care system;

(5) honors the commitment and dedication of those individuals who work tirelessly to provide assistance and services to children in the foster care system; and

(6) recognizes the need to continue working to improve the outcomes of all children in the foster care system through title IV of the Social Security Act (42 U.S.C. 601 et seq.) and other programs designed to help children in the foster care system—

(A) reunite with their biological parents; or

(B) if the children cannot be reunited with their biological parents, find permanent, safe, and loving homes.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4048. Mrs. FEINSTEIN (for herself, Mr. LEVIN, Ms. CANTWELL, Ms. SNOWE, and Mrs. SHAHEEN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4049. Mr. HARKIN (for himself and Mr. CASEY) 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 4050. Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4051. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4052. 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 4053. Ms. STABENOW (for herself 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 4054. 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 4055. Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) 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 4056. Mr. BOND (for himself, Mr. DODD, Mr. WARNER , Mr. BROWN of Massachusetts, Ms. CANTWELL, Mr. BEGICH, Mrs. MURRAY, Mr. CORKER, Mr. TESTER, Mr. BROWNBACK, Mr. BAUCUS, and Mr. REID) 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 4057. Mr. ENZI (for himself and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4058. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4059. Mr. REID (for Mrs. LINCOLN (for herself, Mr. CHAMBLISS, Mr. COCHRAN, 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 4060. 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 4061. Mr. CHAMBLISS 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 4062. 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.

TEXT OF AMENDMENTS

SA 4048. Mrs. FEINSTEIN (for herself, Mr. LEVIN, Ms. CANTWELL, and Ms. SNOWE) 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:

Beginning on page 699, strike line 20 and all that follows through page 704, line 13, 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 for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

''(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

''(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

''(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

''(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

''(aa) the information that the foreign board of trade will make publicly available;

''(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

''(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

''(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

''(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

''(C) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.''.

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting ''or by subsection (e)'' after ''Unless exempted by the Commission pursuant to subsection (c)''; and

(2) by adding at the end the following:

''(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with subparagraphs (A) and (B) of subsection (b)(1).''.

SA 4049. Mr. HARKIN (for himself and Mr. CASEY) 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:

Beginning on page 656, strike line 20 and all that follows through page 657, line 12, and insert the following:

''(2) SPECIAL RULE; DUTY TO PROTECTED CUSTOMERS.—

''(A) DEFINITION OF PROTECTED CUSTOMER.—In this paragraph, the term 'protected customer' means any entity that is—

''(i) a Federal agency;

''(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

''(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

''(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

''(v) any endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

''(B) PROHIBITION.—

''(i) IN GENERAL.—It shall be unlawful for a swap dealer that provides advice regarding, offers to enter into, or enters into, a swap with a protected customer—

''(I) to employ any device, scheme, or artifice to defraud any protected customer or prospective protected customer;

''(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any protected customer or prospective protected customer;

''(III) if the swap dealer acts as a principal for the account of the swap dealer, to knowingly sell any swap to, or purchase any swap from, a protected customer, or if the swap dealer acts as a broker for a person other than the protected customer, to knowingly effect any sale or purchase of any swap for the account of the protected customer, without—

''(aa) before the completion of the transaction, disclosing to the protected customer in writing the capacity in which the swap dealer is acting; and

''(bb) obtaining the consent of the protected customer in writing with respect to the transaction; and

''(IV) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

''(ii) REGULATIONS.—As soon as practicable after the date of enactment of this subparagraph, the Commission shall issue rules and promulgate regulations to prescribe requirements that are reasonably designed to prevent acts, practices, and courses of business that are fraudulent, deceptive, or manipulative.

''(C) REQUIREMENTS.—

''(i) IN GENERAL.—A swap dealer that recommends a swap with a protected customer shall comply with clauses (ii) and (iii).

''(ii) REASONABLE GROUNDS.—In recommending to a protected customer the purchase, sale, or exchange of any swap, a swap dealer shall have reasonable grounds for believing that the recommendation is in the best interests of the protected customer.

''(iii) REASONABLE EFFORTS.—Before the execution of a transaction recommended to a protected customer under clause (ii), a swap dealer shall make reasonable efforts to obtain such information as is necessary to determine whether the transaction is in the best interests of the protected customer, including—

''(I) information relating to—

''(aa) the financial status of the protected customer;

''(bb) the tax status of the protected customer; and

''(cc) the stated investment objectives of the protected customer; and

''(II) such other information that—

''(aa) is used or considered to be reasonable by the swap dealer in making recommendations to the protected customer; and

''(bb) the Commission may prescribe by rule or regulation.

''(iv) BUSINESS CONDUCT REQUIREMENTS.—A swap dealer shall satisfy each business conduct requirement described in paragraph (3).

''(D) WRITTEN REPRESENTATIONS.—

''(i) IN GENERAL.—Before entering into a swap with a protected customer, a swap dealer shall receive in writing a representation from the protected customer confirming that the swap transaction has been expressly authorized—

''(I) by an advisor that is independent of the swap dealer; and

''(II) in the case of an employee benefit plan subject to the fiduciary duty requirements under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), by a representative independent of the swap dealer that is a fiduciary, as defined in section 3 of that Act (29 U.S.C. 1002).

''(ii) REGULATIONS.—Not later than December 31, 2010, the Commission shall issue rules or promulgate regulations to provide guidelines to determine qualifications for advisors that are authorized to provide advice under clause (i)(I).

Beginning on page 863, strike line 22 and all that follows through page 864, line 16, and insert the following:

''(2) SPECIAL RULE; DUTY TO PROTECTED CUSTOMERS.—

''(A) DEFINITION OF PROTECTED CUSTOMER.—In this paragraph, the term 'protected customer' means any entity that is—

''(i) a Federal agency;

''(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

''(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

''(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

''(v) any endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

''(B) PROHIBITION.—

''(i) IN GENERAL.—It shall be unlawful for a security-based swap dealer that provides advice regarding, offers to enter into, or enters into, a security-based swap with a protected customer—

''(I) to employ any device, scheme, or artifice to defraud any protected customer or prospective protected customer;

''(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any protected customer or prospective protected customer;

''(III) if the security-based swap dealer acts as a principal for the account of the security-based swap dealer, to knowingly sell any security-based swap to, or purchase any security-based swap from, a protected customer, or if the security-based swap dealer acts as a broker for a person other than the protected customer, to knowingly effect any sale or purchase of any security-based swap for the account of the protected customer, without—

''(aa) before the completion of the transaction, disclosing to the protected customer in writing the capacity in which the security-based swap dealer is acting; and

''(bb) obtaining the consent of the protected customer in writing with respect to the transaction; and

''(IV) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

''(ii) REGULATIONS.—As soon as practicable after the date of enactment of this subparagraph, the Commission shall issue rules and promulgate regulations to prescribe requirements that are reasonably designed to prevent acts, practices, and courses of business that are fraudulent, deceptive, or manipulative.

''(C) REQUIREMENTS.—

''(i) IN GENERAL.—A security-based swap dealer that recommends a security-based swap with a protected customer shall comply with clauses (ii) and (iii).

''(ii) REASONABLE GROUNDS.—In recommending to a protected customer the purchase, sale, or exchange of any security-based swap, a security-based swap dealer shall have reasonable grounds for believing that the recommendation is in the best interests of the protected customer.

''(iii) REASONABLE EFFORTS.—Before the execution of a transaction recommended to a protected customer under clause (ii), a security-based swap dealer shall make reasonable efforts to obtain such information as is necessary to determine whether the transaction is in the best interests of the protected customer, including—

''(I) information relating to—

''(aa) the financial status of the protected customer;

''(bb) the tax status of the protected customer; and

''(cc) the stated investment objectives of the protected customer; and

''(II) such other information that—

''(aa) is used or considered to be reasonable by the security-based swap dealer in making recommendations to the protected customer; and

''(bb) the Commission may prescribe by rule or regulation.

''(iv) BUSINESS CONDUCT REQUIREMENTS.—A security-based swap dealer shall satisfy each business conduct requirement described in paragraph (3).

''(D) WRITTEN REPRESENTATIONS.—

''(i) IN GENERAL.—Before entering into a security-based swap with a protected customer, a security-based swap dealer shall receive in writing a representation from the protected customer confirming that the security-based swap transaction has been expressly authorized—

''(I) by an advisor that is independent of the security-based swap dealer; and

''(II) in the case of an employee benefit plan subject to the fiduciary duty requirements under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), by a representative independent of the security-based swap dealer that is a fiduciary, as defined in section 3 of that Act (29 U.S.C. 1002).

''(ii) REGULATIONS.—Not later than December 31, 2010, the Commission shall issue rules or promulgate regulations to provide guidelines to determine qualifications for advisors that are authorized to provide advice under clause (i)(I).

SA 4050. Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1187, line 9, strike ''effective.'' insert the following: ''effective.

Subtitle K—Resource Extraction Issuers

SEC. 995. FINDINGS.

Congress finds the following:

(1) It is in the interest of the United States to promote good governance in the extractive industries sector. Transparency in revenue payments benefits oil, gas, and mining companies, because it improves the business climate in which such companies work, increases the reliability of commodity supplies upon which businesses and people in the United States rely, and promotes greater energy security.

(2) Companies in the extractive industries sector face unique tax and reputational risks, in the form of country-specific taxes and regulations. Exposure to these risks is heightened by the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments, which in turn creates unstable and high-cost operating environments for multinational companies. The effects of these risks are material to investors.

SEC. 996. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE.—

''(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource

extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

''(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(D) INTERACTIVE DATA STANDARD.—

''(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) PUBLIC AVAILABILITY OF INFORMATION.—

''(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.''.

SA 4051. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 18, between lines 17 and 18, insert the following:

SEC. 5. PROHIBITION ON THE USE OF FEDERAL FUNDS TO PAY STATE OBLIGATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, no Federal funds may be used to purchase or guarantee obligations of, issue lines of credit to or provide direct or indirect grants-and-aid to, any State government, municipal government, local government, or county government which has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(b) LIMIT ON USE OF BORROWED FUNDS.—The Secretary shall not, directly or indirectly, use general fund revenues or funds borrowed pursuant to title 31, United States Code, to purchase or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(c) LIMIT ON FEDERAL RESERVE FUNDS.—The Board of Governors shall not, directly or indirectly, lend against, purchase, or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, local government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government. Notwithstanding any other provision of law, no Federal funds may be used to pay the obligations of any State, or to issue a line of credit to any State.

SA 4052. 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 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. REPRESENTATIONS AND WARRANTIES FOR POOL ASSETS.

(a) REPRESENTATIONS AND WARRANTIES.—

(1) DEFINITIONS.—In this subsection—

(A) the terms ''asset-backed security'', ''servicer'', and ''sponsor'' have the meanings given those terms under Regulation AB; and

(B) the term ''Regulation AB'' means subpart 229.1100 of title 17, Code of Federal Regulations, or any successor thereto.

(2) RULES REQUIRED.—

(A) COMPLIANCE.—Not later than 270 days after the date of enactment of this Act, the Commission shall issue rules, as the Commission determines is necessary and appropriate consistent with the protection of investors, that require any issuance of an asset-backed security to comply with paragraph (3).

(B) DEFINITION.—The Commission shall, by rule, define the term ''pool assets'' for purposes of this subsection.

(3) PERIODIC INDEPENDENT EVALUATION.—The pooling and servicing agreement for an asset-backed security shall contain provisions requiring the sponsor of the asset-backed security to furnish to the trustee of the asset-backed security, on a quarterly basis, a certificate or opinion from an independent evaluator that—

(A) identifies any pool assets that in the prior quarter, the trustee notified, or had the right to notify, the obligor that it had an obligation to repurchase or substitute under the terms of the pooling and servicing agreement because of a breach or violation of a representation or warranty; and

(B) includes facts supporting a finding as to whether any representation or warranty made with respect to any pool asset has been breached or violated.

(4) INDEPENDENT EVALUATOR.—For purposes of paragraph (3), an independent evaluator shall—

(A) be subject to removal upon the vote of 25 percent of the holders of outstanding shares of the asset-backed security; and

(B) have access to the pool asset records and related documents of any party to the pooling and servicing agreement and any person performing work on behalf of any party to the pooling and servicing agreement.

(5) EXEMPTIONS.—The Commission may, by rule, exempt a class of asset-backed securities from the rules issued under this subsection, if the Commission determines that the application of such rules to the class of asset-backed securities would cause undue disruption to a segment of the market affected by the class of asset-backed securities.

(b) DIRECT REVIEW.—An investor or group of investors that holds not less than 20 percent of the outstanding securities of an asset-backed security (including an asset-backed security that is not subject to the requirements under subpart 229.1100 of title 17, Code of Federal Regulations) that is issued or outstanding on or before the date of enactment of this Act shall have access to all loan documents and related documents of any servicer of the asset-backed security (including servicing records), unless otherwise prohibited in a contract with respect to the asset-backed security.

(c) ENFORCEMENT.—The Commission may enforce the rules issued under this section in the same manner as the Commission enforces rules issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

SA 4053. Ms. STABENOW (for herself 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 540, line 16, strike ''purchase'' and insert ''purchase or lease''.

On page 580, line 20, insert ''and involved in hedging activities related to'' after ''engaged in''.

On page 580, line 21, strike ''purchase'' and insert ''purchase or lease''.

On page 580, line 23, strike ''user'' and insert ''user (including any subsidiary of the commercial end user)''.

On page 580, lines 24 and 25, strike ''only if the affiliate'' and insert ''as can affiliates''.

On page 581, line 1, strike ''uses'' and insert ''using''.

On page 582, between lines 6 and 7, insert the following:

''(iii) TRANSITION RULE.—An affiliate or a wholly owned entity of a commercial end user that is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the commercial end user affiliate (including any subsidiary of the commercial end user) shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 3-year period beginning on the date of enactment of this clause.

''(iv) AUTHORITY OF COMMISSION.—On or prior to the date on which the 3-year period described in clause (iii) ends, the Commission may extend the exemption described in that clause for an additional 1-year period if the Commission—

''(I) determines the extension to be in the public interest; and

''(II) publishes in the Federal Register the order granting the extension (including the reasons for the extension).

SA 4054. 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 1052, line 3, strike ''**SEC. 942.**'' and insert the following:

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—

(A) are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

(B) were in existence on January 1, 2009.

(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 4055. Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) 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 485, line 14, strike ''and'' and all that follows through line 25 and insert the following:

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

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SA 4056. Mr. BOND (for himself, Mr. DODD, Mr. WARNER, Mr. BROWN of Massachusetts, Ms. CANTWELL, Mr. BEGICH, Mrs. MURRAY, Mr. CORKER, Mr. TESTER, Mr. BROWNBACK, Mr. BAUCUS, and Mr. REID) 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 387, strike line 13 and all that follows through page 388, line 3, and insert the following:

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term ''accredited investor'', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

On page 388, line 14, strike ''1 year'' and insert ''3 years''.

On page 998, strike line 12 and all that follows through page 1001, line 25, and insert the following:

SEC. 926. DISQUALIFYING FELONS AND OTHER ''BAD ACTORS'' FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SA 4057. Mr. ENZI (for himself and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big 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 956, strike line 10 and all that follows through page 957, line 11, and insert the following:

SEC. 978. FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), as amended by section 912, is further amended by adding at the end the following:

''(g)(1) The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act (15 U.S.C. 78*o*–4) require a national securities association registered under the Securities Exchange Act of 1934 to establish—

''(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (hereafter referred to in this subsection as the 'GASB'); and

''(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

''(2) ANNUAL BUDGET.—For purpose of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the FAF's internal procedures.

''(3) USE OF FUNDS.—Any funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

''(4) LIMITATION ON FEE.—The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

''(5) RULES OF CONSTRUCTION.—

''(A) FEES NOT PUBLIC MONIES.—Accounting support fees collected pursuant to this subsection and other receipts of the GASB shall not be considered public monies of the United States.

''(B) LIMITATION ON AUTHORITY OF THE COMMISSION.—Nothing in this subsection shall be construed to—

''(i) provide the Commission or any national securities association direct or indirect oversight of GASB's budget or technical agenda; or

''(ii) affect the GASB's setting of generally accepted accounting principles.

''(C) NONINTERFERENCE WITH STATES.—Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.''.

(b) STUDY OF FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that evaluates—

(A) the role and importance of the Governmental Accounting Standards Board in the municipal securities markets;

(B) the manner and the level at which the Governmental Accounting Standards Board has been funded;

(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with the principal organizations representing State governors, legislators, and local elected officials and State and local finance officers.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

SA 4058. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1223, line 5, strike ''and'' and all that follows through line 7, and insert the following:

(8) an Office of Management and Budget (hereafter in this section referred to as ''OMB'') analysis of the economic impact of all rules and orders adopted by the Bureau, as well as other initiatives conducted by the Bureau, during the preceding year, which shall include—

(A) the total costs of such rules, orders, and initiatives;

(B) the annual impact on employment, both nationally and by State;

(C) the estimated time for covered persons to comply with such rules, orders, and initiatives, both on average and by size of business covered; and

(D) the number of persons affected by each such rule, order, and initiative;

(9) an OMB analysis of the economic impact of all statutes, rules, regulations, and orders related to this Act, which shall include—

(A) a statement of the need for the proposed action and an analysis of whether there exists a market failure;

(B) an examination of alternative approaches, including a baseline case of not taking the regulatory action;

(C) a statement of the plausible scenarios for which the proposed action could lead to a Government failure;

(D) the total costs of all such rules and orders;

(E) the annual impact on employment nationally, by State, and by industry;

(F) the estimated time for covered persons to comply with all such rules, orders, and initiatives both on average and by size of business covered;

(G) the number of persons affected by each such rule, order, and initiative;

(H) an analysis of estimated effects on market efficiency and market competition, including a Regulatory Flexibility Act (5 U.S.C. chapter 6) analysis to assess the impact on small business and other small entities;

(I) an analysis of estimated effects on United States economic growth, United States economic competitiveness, and international trade;

(J) a Paperwork Reduction Act (44 U.S.C. chapter 35) analysis;

(K) a report of the precision of estimates and a statement of the key assumptions;

(L) a sensitivity analysis, based on plausible alternative assumptions for data, methodologies, and assumed levels of compliance and enforcement;

(M) any other economic analysis of regulatory actions required by Executive Order by the President of the United States;

(10) the annual compensation received by employees of the Bureau, including the total, the average, and the number of employees receiving salaries in excess of $100,000 and $200,000 and such calculation of compensation shall include the value of all non-salary compensation (including flex-time, vacation time, retirement benefits, and collective bargaining benefits);

(11) a copy of any collective bargaining agreements, or amendments to such agreements, entered into between the Bureau and its union during the preceding year;

(12) an analysis of the effectiveness of the Bureau, including evidence on whether each rule and regulation it has adopted during the preceding 10 years have produced a reduction in consumer complaints;

(13) a copy of any agreements with State attorneys, State regulators, private attorneys, or any other person or entity relating to the enforcement of consumer financial protection laws; and

(14) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau.

(d) ANNUAL REVIEW OF RULES AND REGULATIONS.—

(1) IN GENERAL.—OMB shall review, on a rolling-basis each statute, rule, regulation, and order related to this Act, to determine whether such statute, rule, regulation, order has achieved its intended result and whether such statute, rule, regulation, or order should be modified or repealed based on changes in the marketplace. Each such statute, rule, regulation, and order shall be reviewed not less frequently than once every 8 years.

(2) REPORT.—In connection with the review required under paragraph (1), OMB shall annually produce a report discussing its findings, including—

(A) providing evidence on whether each statute, rule, regulation, or order under review should be retained, modified, or repealed;

(B) a discussion of the original intent of each statute, rule, regulation, and order;

(C) an analysis of whether each such statute, rule, regulation, and order achieved its intended results; and

(D) a cost benefit analysis of such statute, rule, regulation, and order that estimates the actual costs imposed on the private sector, compared to the actual benefits to the private sector attained, which cost benefit analysis shall include the costs of complying with such statute, rule, regulation, and order, the impact on innovation, and actual litigation costs incurred by private and governmental parties in litigating such statute and regulation.

(3) NOTICE TO BUREAU.—If OMB determines under paragraph (2) that any regulation has

not yielded a positive cost-benefit result, the Bureau shall be promptly repealed such regulation or modify such regulation so that it is estimated to produce a positive cost-benefit result.

(4) NOTICE TO CONGRESS.—If OMB determines under paragraph (2) that any statute has not yielded a positive cost-benefit result, OMB shall notify Congress and provide a recommendation on whether the statute should be repealed or modified to produce a positive cost-benefit result.

SA 4059. Mr. REID (for Mrs. LINCOLN (for herself, Mr. CHAMBLISS, Mr. COCHRAN, 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 565, between lines 2 and 3, insert the following:

(e) PRESERVATION OF OTHER REGULATORY AUTHORITY.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

''(vi) No provision of this Act shall be construed—

''(I) to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.);

''(II) to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission under the Acts described in subclause (I);

''(III) to affect the authority of the Federal Energy Regulatory Commission to approve, deny, or otherwise permit any rate or charge made, demanded, or received by any public utility or natural gas company for the transportation or sale of electric energy or natural gas subject to the jurisdiction of the Federal Energy Regulatory Commission; or

''(IV) to supersede or limit the authority of a State regulatory commission that has jurisdiction to regulate rates and charges for the transmission or sale of electric energy within the State, or restrict that State regulatory commission from carrying out the duties and responsibilities of the State regulatory commission pursuant to the jurisdiction of the State regulatory commission to regulate rates and charges for the transmission or sale of electric energy.

''(vii) Nothing in clause (vi) shall affect the Commission's exclusive jurisdiction under subparagraph (A) with respect to the trading, execution, or clearing of any agreement, contract, or transaction on or subject to the rules of a registered entity, including a designated contract market, derivatives clearing organization, or swap execution facility.''.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

''(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

''(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

''(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

''(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

''(7)(A) Any person may apply to the Commission for an exemption from the requirements of this Act with respect to an agreement, contract, or transaction described in paragraph (6).

''(B) Not later than 1 business day after the date of receipt of an application described in subparagraph (A), the Commission shall notify, and provide a copy of the application to—

''(i) the Federal Energy Regulatory Commission; and

''(ii) with respect to an application filed with respect to paragraph (6)(B), the relevant State regulatory body or municipality.

''(C) The Commission shall provide not less than a 30-day period for public comment with respect to any application described in subparagraph (A).

''(D)(i) Not later than the date on which the public comment period described in subparagraph (C) expires, the Federal Energy Regulatory Commission (and the relevant State regulatory body or municipality with respect to an application filed with respect to paragraph (6)(B)) may provide to the Commission a recommendation regarding the application for exemption.

''(ii) The Commission shall give due consideration to any recommendation described in clause (i).

''(E) Not later than 120 days after the date of receipt of an application described in subparagraph (A), the Commission shall, by order—

''(i) grant an exemption in accordance with paragraph (6); or

''(ii) provide to the applicant a document that contains a description of each reason relied on by the Commission for not granting an exemption.''.

SA 4060. 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 485, strike line 1 and all that follows through page 489, line 13, and insert the following:

(2) the term ''insured depository institution'' does not include an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(3) the term ''proprietary trading''—

(A) means purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book (or such other portfolio as the Federal banking agencies may determine) of such institution, company, or subsidiary;

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

(4) the term ''sponsoring'', when used with respect to a hedge fund or private equity fund, means—

(A) serving as a general partner, managing member, or trustee of the fund;

(B) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(b) PROHIBITION ON PROPRIETARY TRADING.—

(1) IN GENERAL.—Subject to the recommendations and modifications of the Council under subsection (g), and except as provided in paragraph (2) or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) EXCEPTED OBLIGATIONS.—

(A) IN GENERAL.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal

National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including obligations fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and modifications of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(3) EXCEPTION.—Notwithstanding paragraph (1), an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company may sponsor or invest in a hedge fund or a private equity fund, if—

(A) such institution, company, or subsidiary provides trust, fiduciary, or advisory services to the fund;

(B) the fund is sponsored and offered in connection with the provision of trust, fiduciary, or advisory services by such institution, company, or subsidiary to persons who are, or may be, customers or clients of such institution, company, or subsidiary;

(C) such institution, company, or subsidiary—

(i) does not acquire or retain an equity, partnership, or ownership interest in the fund; or

(ii) acquires or retains an equity, partnership, or ownership interest, if—

(I) on the date that is 12 months after the date on which the fund is established, the equity, partnership, or ownership interest is not greater than 5 percent of the total equity of the fund; and

(II) the aggregate equity investments by such institution, company, or subsidiary in the fund do not exceed 5 percent of Tier 1 capital of such institution, company, or subsidiary;

(D) such institution, company, or subsidiary does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), except on terms and under circumstances specified in section 23B of the Federal Reserve Act (12 U.S.C. 371c–1);

(E) the obligations of the fund are not guaranteed, directly or indirectly, by such institution, company, or subsidiary any affiliate of such institution, company, or subsidiary; and

(F) such institution, company, or subsidiary does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

SA 4061. Mr. CHAMBLISS 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:

Beginning on page 539, strike line 14 and all that follows through page 584, line 7, and insert the following:

''(33) MAJOR SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

''(i)(I) maintains a substantial net position in swaps for any of the major swap categories as determined by the Commission, excluding—

''(aa) positions held for hedging or mitigating commercial risk, including operating risk and balance sheet risk, of such person or its affiliates; and

''(bb) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; and

''(II) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

''(ii)(I) is a financial entity, other than an entity predominantly engaged in providing customer financing for the purchase of an affiliate's merchandise or manufactured goods, that is highly leveraged relative to the amount of capital it holds;

''(II) maintains a substantial net position in outstanding swaps in any major swap category as determined by the Commission; and

''(III) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.

''(B) DEFINITION OF SUBSTANTIAL NET POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term 'substantial net position' to mean a position after application of legally enforceable netting or collateral arrangements that meets a threshold the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.

''(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

''(D) CAPITAL.—In setting capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a major swap participant.'';

(17) by inserting after paragraph (38) (as redesignated by paragraph (1)) the following:

''(39) PRUDENTIAL REGULATOR.—The term 'prudential regulator' means—

''(A) the Office of the Comptroller of the Currency, in the case of—

''(i) any national banking association;

''(ii) any Federal branch or agency of a foreign bank; or

''(iii) any Federal savings association;

''(B) the Federal Deposit Insurance Corporation, in the case of—

''(i) any insured State bank;

''(ii) any foreign bank having an insured branch; or

''(iii) any State savings association;

''(C) the Board of Governors of the Federal Reserve System, in the case of—

''(i) any noninsured State member bank;

''(ii) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act (12 U.S.C. 221 et seq.) which is made applicable under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.);

''(iii) any foreign bank which does not operate an insured branch;

''(iv) any agency or commercial lending company other than a Federal agency; or

''(v) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1464 et seq.); and

''(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).'';

(18) in paragraph (40) (as redesignated by paragraph (1))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (F), respectively;

(C) in subparagraph (C) (as so redesignated), by striking ''and'';

(D) by inserting after subparagraph (C) (as so redesignated) the following:

''(D) a swap execution facility registered under section 5h;

''(E) a swap data repository; and'';

(19) by inserting after paragraph (41) (as redesignated by paragraph (1)) the following:

''(42) SECURITY-BASED SWAP.—The term 'security-based swap' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

''(43) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).'';

(20) in paragraph (46) (as redesignated by paragraph (1)), by striking ''subject to section 2(h)(7)'' and inserting ''subject to section 2(h)(5)'';

(21) by inserting after paragraph (46) (as redesignated by paragraph (1)) the following:

''(47) SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction—

''(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

''(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

''(I) an interest rate swap;

''(II) a rate floor;

''(III) a rate cap;

''(IV) a rate collar;

''(V) a cross-currency rate swap;

''(VI) a basis swap;

''(VII) a currency swap;

''(VIII) a foreign exchange swap;

''(IX) a total return swap;

''(X) an equity index swap;

''(XI) an equity swap;

''(XII) a debt index swap;

''(XIII) a debt swap;

''(XIV) a credit spread;

''(XV) a credit default swap;

''(XVI) a credit swap;

''(XVII) a weather swap;

''(XVIII) an energy swap;

''(XIX) a metal swap;

''(XX) an agricultural swap;

''(XXI) an emissions swap; and

''(XXII) a commodity swap;

''(iv) that is an agreement, contract, or transaction that is, or in the future becomes commonly known to the trade as a swap;

''(v) including any security-based swap agreement which meets the definition of 'swap agreement' as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

''(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

''(B) EXCLUSIONS.—The term 'swap' does not include—

''(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

''(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

''(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to—

''(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

''(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

''(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

''(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

''(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a));

''(viii) any agreement, contract, or transaction that is—

''(I) based on a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

''(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

''(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

''(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'swap' includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

''(ii) EXCEPTION.—For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).

''(D) MIXED SWAP.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

''(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS.—

''(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination that either foreign exchange swaps or foreign exchange forwards or both—

''(I) should be not be regulated as swaps under this Act; and

''(II) are not structured to evade the Wall Street Transparency and Accountability Act of 2010 in violation of any rule promulgated by the Commission pursuant to section 111(c) of that Act.

''(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

''(iii) REPORTING.—Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

''(iv) BUSINESS STANDARDS.—Notwithstanding clauses (ix) and (x) of subparagraph (B) and clause (ii), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

''(v) SECRETARY.—For purposes of this subparagraph only, the term 'Secretary' means the Secretary of the Treasury.

''(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—

''(i) REGISTERED ENTITIES.—Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization shall not be exempt from any provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

''(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

''(48) SWAP DATA REPOSITORY.—The term 'swap data repository' means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties.

''(49) SWAP DEALER.—

''(A) IN GENERAL.—The term 'swap dealer' means any person who—

''(i) holds itself out as a dealer in swaps;

''(ii) makes a market in swaps;

''(iii) regularly engages in the purchase and sale of swaps to customers as its ordinary course of business; and

''(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

''(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

''(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a swap dealer.

''(D) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, or on behalf of any affiliates of such person, unless it does so as a market maker and as a part of a regular business.

''(50) SWAP EXECUTION FACILITY.—The term 'swap execution facility' means a facility 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 facility or system, through any means of interstate commerce, including any trading facility, that—

''(A) facilitates the execution of swaps between persons; and

''(B) is not a designated contract market.''; and

(22) in paragraph (51) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking ''partipants'' and inserting ''participants''.

(b) AUTHORITY TO DEFINE TERMS.—The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term ''commercial risk''; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

(c) MODIFICATION OF DEFINITIONS.—To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms ''swap'', ''swap dealer'', ''major swap participant'', and ''eligible contract participant''.

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking ''except that'' and all that follows through the period at the end and inserting the following: ''except that—

''(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

''(i) with respect to—

''(I) paragraphs (2), (3), (4), (5), and (7), clause (vii)(III) of paragraph (17), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), 2(c)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and

''(II) section 206(e) of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note); and

''(ii) in subsection (c) of section 111 and section 132; and

''(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)) if the Commission determines that the exemption would be consistent with the public interest.''.

(e) CONFORMING AMENDMENTS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (cc)—

(i) in subitem (AA), by striking ''section 1a(20)'' and inserting ''section 1a''; and

(ii) in subitem (BB), by striking ''section 1a(20)'' and inserting ''section 1a''; and

(B) in item (dd), by striking ''section 1a(12)(A)(ii)'' and inserting ''section 1a(18)(A)(ii)''.

(2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking ''section 1a(6)'' and inserting ''section 1a''.

(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o–1(a)(1)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1(a)) is amended, in the matter preceding paragraph (1), by striking ''section 1a(9)'' and inserting ''section 1a''.

(7) Section 5c(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(8) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended—

(A) in subclause (I), by striking ''section 1a(12)(B)(ii)'' and inserting ''section 1a(18)(B)(ii)''; and

(B) in subclause (II), by striking ''section 1a(12)'' and inserting ''section 1a(18)''.

(9) The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) in section 402—

(i) in subsection (a)(7), by striking ''section 1a(20)'' and inserting ''section 1a'';

(ii) in subsection (b)(2), by striking ''section 1a(12)'' and inserting ''section 1a'';

(iii) in subsection (c), by striking ''section 1a(4)'' and inserting ''section 1a''; and

(iv) in subsection (d)—

(I) in the matter preceding paragraph (1), by striking ''section 1a(4)'' and inserting ''section 1a(9)'';

(II) in paragraph (1)—

(aa) in subparagraph (A), by striking ''section 1a(12)'' and inserting ''section 1a''; and

(bb) in subparagraph (B), by striking ''section 1a(33)'' and inserting ''section 1a'';

(III) in paragraph (2)—

(aa) in subparagraph (A), by striking ''section 1a(10)'' and inserting ''section 1a'';

(bb) in subparagraph (B), by striking ''section 1a(12)(B)(ii)'' and inserting ''section 1a(18)(B)(ii)'';

(cc) in subparagraph (C), by striking ''section 1a(12)'' and inserting ''section 1a(18)''; and

(dd) in subparagraph (D), by striking ''section 1a(13)'' and inserting ''section 1a''; and

(B) in section 404(1), by striking ''section 1a(4)'' and inserting ''section 1a''.

SEC. 722. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended in the first sentence—

(1) by inserting ''the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and'' after ''otherwise provided in'';

(2) by striking ''(c) through (i) of this section'' and inserting ''(c) and (f)'';

(3) by striking ''contracts of sale'' and inserting ''swaps or contracts of sale''; and

(4) by striking ''or derivatives transaction execution facility registered pursuant to section 5 or 5a'' and inserting ''pursuant to section 5''.

(b) REGULATION OF SWAPS UNDER FEDERAL AND STATE LAW.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

''(h) REGULATION OF SWAPS AS INSURANCE UNDER STATE LAW.—A swap—

''(1) shall not be considered to be insurance; and

''(2) may not be regulated as an insurance contract under the law of any State.''.

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

''(ii) a swap; or''.

(d) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:

''(i) APPLICABILITY.—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

''(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

''(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.''.

SEC. 723. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i) as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

''(d) SWAPS.—Nothing in this Act (other than subparagraphs (A), (B), (C), and (D) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2) and (f) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities and Commission registrants) governs or applies to a swap.

''(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.''.

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

''(h) CLEARING REQUIREMENT.—

''(1) OPEN ACCESS.—The rules of a registered derivatives clearing organization shall—

''(A) prescribe that all swaps with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization; and

''(B) provide for nondiscriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility, subject to the requirements of section 5b.

''(2) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall, jointly with the Securities and Exchange Commission and the Federal Reserve Board of Governors, adopt rules to establish criteria for determining that a swap or group, category, type, or class of swap is required to be cleared.

''(B) FACTORS.—In carrying out subparagraph (A), the following factors shall be considered:

''(i) Whether 1 or more derivatives clearing organizations or clearing agencies accepts the swap or group, category, type, or class of swap for clearing.

''(ii) Whether the swap or group, category, type, or class of swap is traded pursuant to standard documentation and terms.

''(iii) The liquidity of the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof.

''(iv) The ability to value the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices.

''(v) The size of the market for the swap or group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing.

''(vi) Whether a clearing mandate would mitigate risk to the financial system or whether it would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency.

''(vii) Such other factors as the Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors jointly may determine are relevant.

''(C) SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

''(i) shall review each swap, or any group, category, type, or class of swap that is currently listed for clearing and those which a derivatives clearing organization notifies the Commission that the derivatives clearing organization plans to list for clearing after the date of enactment of this subsection;

''(ii) except as provided in paragraph (3), may require, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, that a particular swap, group, category, type, or class of swap must be cleared; and

''(iii) shall rely on economic analysis provided by economists of the Commission in making any determination under clause (ii).

''(D) EFFECT.—

''(i) IN GENERAL.—Nothing in this paragraph affects the ability of a derivatives clearing organization to list for permissive clearing any swap, or group, category, type, or class of swaps.

''(ii) PROHIBITION.—The Commission shall not compel a derivatives clearing organization to list a swap, group, category, type, or class of swap for clearing if the derivatives clearing organization determines that the swap, group, category, type, or class of swap would adversely impact its business operations, or impair the financial integrity of the derivatives clearing organization.

''(iii) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of subparagraph (C), if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) of this Act will accept the swap for clearing.

''(E) PREVENTION OF EVASION.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under subparagraph (C). In issuing such rules or interpretations, the Commission shall consider—

''(i) the extent to which the terms of the swap, group, category, type, or class of swap are similar to the terms of other swaps, groups, categories, types, or classes of swap that are required to be cleared by swap participants under subparagraph (C); and

''(ii) whether there is an economic purpose for any differences in the terms of the swap or group, category, type, or class of swap that are required to be cleared by swap participants under subparagraph (C).

''(F) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, rescind a requirement imposed under subparagraph (C) with respect to a swap, group, category, type, or class of swap.

''(G) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission use its authority under subparagraph (C) to require clearing of a particular swap, group, category, type, or class of swap or to use its authority under subparagraph (F) to rescind a requirement for swap participants to clear a particular swap, group, category, type, or class of swap.

''(H) FOREIGN EXCHANGE FORWARDS, SWAPS, AND OPTIONS.—Foreign exchange forwards, swaps, and options shall not be subject to a clearing requirement under subparagraph (C) unless the Department of the Treasury and the Board of Governors determine that such a requirement is appropriate after considering whether there exists an effective settlement system for such foreign exchange forwards, swaps, and options and any other factors that the Department of the Treasury and the Board of Governors deem to be relevant.

''(3) END USER CLEARING EXEMPTION.—

''(A) DEFINITIONS.—In this paragraph:

''(i) COMMERCIAL END USER.—The term 'commercial end user' means any person who, as its primary business activity owns, operates, uses, produces, processes, develops, leases, manufacturers, distributes, merchandises, provides or markets goods, services, physical assets, or commodities (which shall include but not be limited to coal, natural gas, electricity, biofuels, crude oil, gasoline, propane, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.

''(ii) FINANCIAL ENTITY END USER.—

''(I) IN GENERAL.—The term 'financial entity end user' means any person predominately engaged in activities that are financial in nature, as determined by the Commission.

''(II) EXCLUSIONS.—The term 'financial entity end user' does not include—

''(aa) any person who is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant;

''(bb) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act o f 1940 (15 U.S.C. 80a-3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets;

''(cc) entities defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20));

''(dd) a commodity pool; or

''(ee) a commercial end user.

''(B) END USER CLEARING EXEMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), in the event that a swap is subject to the mandatory clearing requirement under paragraph (2), and 1 of the counterparties to the swap is a commercial end user or a financial entity end user, that counterparty—

''(I)(aa) may elect not to clear the swap, as required under paragraph (2); or

''(bb) may elect, prior to entering into the swap transaction, to require clearing of the swap; and

''(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

''(ii) LIMITATION.—A commercial end user or a financial entity end user may only make an election under clause (i) if the end user is using the swap to hedge commercial risk, including operating risk and balance sheet risk.

''(C) TREATMENT OF AFFILIATES.—

''(i) IN GENERAL.—An affiliate of a commercial end user (including affiliate entities predominantly engaged in providing financing for the purchase of merchandise or manufactured goods of the commercial end user) or a financial entity end user may make an election under subparagraph (B)(i) only if the affiliate uses the swap to hedge or mitigate the commercial risk, including operating risk and balance sheet risk, of the commercial end user or the financial entity end user or other affiliate of the commercial end user or financial entity end user.

''(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user or a financial entity end user shall not use the exemption under subparagraph (B) if the affiliate is—

''(I) a swap dealer;

''(II) a security-based swap dealer;

''(III) a major swap participant;

''(IV) a major security-based swap participant;

''(V) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets; or

''(VI) a commodity pool.

''(D) ABUSE OF EXEMPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B). The Commission may also request information from those entities claiming the clearing exemption as necessary to prevent abuse of the exemption described in subparagraph (B).

''(4) REQUIRED REPORTING.—Each swap that is not cleared by any derivatives clearing organization shall be reported either to a registered swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r.

''(5) TRANSITION RULES.—

''(A) REPORTING TRANSITION RULES.—The Commission shall provide for the reporting of data, as follows:

''(i) SWAPS ENTERED INTO BEFORE DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission not later than 180 days after the effective date of this subsection.

''(ii) SWAPS ENTERED INTO ON OR AFTER DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission not later than such time period as the Commission prescribe.

''(B) CLEARING TRANSITION RULES.—Swaps entered into before the effective date of any requirement under paragraph (2)(C) are exempt from the clearing requirements of this subsection.

''(6) REPORTING OBLIGATIONS.—

''(A) SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (4) and (5).

''(B) SWAPS IN WHICH 1 COUNTERPARTY IS A SWAP DEALER AND THE OTHER A MAJOR SWAP PARTICIPANT.—With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (4) and (5).

''(C) OTHER SWAPS.—With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (4) and (5).

''(7) TRADE EXECUTION.—

''(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement established under paragraph (2), counterparties shall—

''(i) execute the transaction on a board of trade designated as a contract market under section 5; or

''(ii) execute the transaction on a swap execution facility registered under section 5h or a swap execution facility that is exempt from registration under section 5h(f).

''(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or in the case of a swap transaction for which a commercial end or financial entity user opts to use the clearing exemption under paragraph (3).

''(8) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of this subsection and any rules issued under this subsection, if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) will accept the swap from clearing.''.

SA 4062. 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 1204, line 25, strike ''or'' and all that follows through page 1205, line 4 and insert the following:

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media;

(iii) information products or services for identity authentication, fraud, or identity theft detection, prevention, or investigation, or anti-money laundering activities, unless such products or services are regulated under the Bank Service Company Act (12 U.S.C. 1861 et seq.); or

(iv) public records information or document retrieval or delivery services, unless such products or services are regulated under the Bank Service Company Act (12 U.S.C. 1861 et seq.).

NOTICE OF HEARING

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SCHUMER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, May 19, 2010, at 10 a.m., to hear testimony on hearing entitled ''Examining the Filibuster: The Filibuster Today and Its Consequences.''

For further information regarding this meeting, please contact Lynden Armstrong at the Rules and Administration Committee on 202–224–6352.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on May 17, 2010, at 2:30 p.m. to conduct a hearing entitled ''Gulf Coast Catastrophe: Assessing the Nation's Response to the Deepwater Horizon Oil Spill.''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate May 17, 2010, at 5:30 p.m.

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

RECOGNIZING NATIONAL FOSTER CARE MONTH CHALLENGES

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 533, submitted early today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 533) recognizing National Foster Care Month as an opportunity to raise awareness about the challenges of children in the foster care system and encouraging Congress to implement policy to improve the lives of children in the foster care system.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 533) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 533

Whereas all children deserve a safe, loving, and permanent home;

Whereas approximately 500,000 children in the United States live in foster care each year;

Whereas children enter the foster care system for a variety of reasons, including inadequate care, abuse, or neglect by a parent or guardian;

Whereas the major factors that contribute to the placement of a child in the foster care system include substance abuse, mental illness, poverty, and a lack of education of a parent or guardian of the child;

Whereas a child entering the foster care system must confront the widespread misperception that children in foster care are disruptive, unruly, and dangerous, even though placement in the foster care system is based on the actions of a parent or guardian, not the child;

Whereas States and communities should be provided with the resources to invest in preventative and reunification services and post-permanency programs to ensure that more children in the foster care system are provided safe, loving, permanent placements;

Whereas the foster care system is intended to be a temporary solution, yet children remain in the foster care system for an average of 3 years;

Whereas children of color are disproportionately represented in the foster care system and are less likely to be reunited with their biological families;

Whereas the average child in the foster care system—

(1) is 10 years old; and

(2) will be placed in 3 different homes, leading to disruptive transfers to new schools, separation from siblings, and unfamiliar surroundings;

Whereas most children ''age out'' of the foster care system at the age of 18;

Whereas the number of children who enter the foster care system each year has declined over the decade preceding the date of the

from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4028

At the request of Mrs. MCCASKILL, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of amendment No. 4028 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. 4034

At the request of Mr. CORKER, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of amendment No. 4034 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. 4051

At the request of Mr. BOND, his name was added as a cosponsor of amendment No. 4051 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. 4053

At the request of Ms. STABENOW, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of amendment No. 4053 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 63—EXPRESSING THE SENSE OF CONGRESS THAT TAIWAN SHOULD BE ACCORDED OBSERVER STATUS IN THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

Mr. JOHNSON submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 63

Whereas the Convention on International Civil Aviation, signed in Chicago, Illinois, on December 7, 1944, and entered into force April 4, 1947, approved the establishment of the International Civil Aviation Organization (ICAO), stating ''The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to . . . meet the needs of the peoples of the world for safe, regular, efficient and economical air transport'';

Whereas, following the terrorist attacks of September 11, 2001, the ICAO convened a High-level Ministerial Conference on Aviation Security that endorsed a global strategy for strengthening aviation security worldwide and issued a public declaration that ''a uniform approach in a global system is essential to ensure aviation security throughout the world and that deficiencies in any part of the system constitute a threat to the entire global system,'' and that there should be a commitment to ''foster international cooperation in the field of aviation security and harmonize the implementation of security measures'';

Whereas, on January 22, 2010, the Secretary General of the ICAO stated, ''The attempted sabotage of Northwest Airlines Flight 253 on December 25, 2009 is a vivid reminder that security threats transcend national boundaries and can only be properly addressed through a global strategy based on effective international cooperation.'';

Whereas the Taipei Flight Information Region, under the jurisdiction of the Republic of China (Taiwan), covers an airspace of 176,000 square nautical miles and provides air traffic control services to over 1,350,000 flights annually along 12 international and 4 domestic air routes;

Whereas over 174,000 international flights carrying more than 35,000,000 passengers travel to and from Taiwan annually, reflecting its importance as an air transport hub linking Northeast and Southeast Asia;

Whereas a total of 30 airlines, 23 of which are foreign-owned, provide scheduled flights to Taiwan;

Whereas airports in Taiwan handle more than 1,580,000 metric tons of air cargo annually;

Whereas Taiwan Taoyuan International Airport was ranked in 2009 by the Airports Council International as the world's 8th and 18th largest airport by international cargo volume and number of International passengers, respectively;

Whereas exclusion from the ICAO since 1971 has impeded the efforts of the Government of Taiwan to maintain civil aviation practices that comport with evolving international standards, due to its inability to contact the ICAO for up-to-date information on aviation standards and norms, secure amendments to the organization's regulations in a timely manner, obtain sufficient and timely information needed to prepare for the implementation of new systems and procedures set forth by the ICAO, receive technical assistance in implementing new regulations, and participate in technical and academic seminars hosted by the ICAO;

Whereas, despite these impediments and irrespective of its inability to participate in the ICAO, the Government of Taiwan has made every effort to comply with the operating procedures and guidelines set forth by the organization;

Whereas, despite this effort, the exclusion of Taiwan from the ICAO has prevented the organization from developing a truly global strategy to address security threats based on effective international cooperation, thereby hindering the fulfillment of its overarching mission to ''meet the needs of the peoples of the world for safe, regular, efficient and economical air transport'';

Whereas the United States, in the 1994 Taiwan Policy Review, clearly declared its support for the participation of Taiwan in appropriate international organizations, in particular, on September 27, 1994, with the announcement by the Assistant Secretary of State for East Asian and Pacific Affairs that, pursuant to the Review and recognizing Taiwan's important role in transnational issues, the United States ''will support its membership in organizations where statehood is not a prerequisite, and [the United States] will support opportunities for Taiwan's voice to be heard in organizations where its membership is not possible'';

Whereas section 4(d) of the Taiwan Relations Act (22 U.S.C. 3303(d)) declares, ''Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.''; and

Whereas ICAO rules and existing practices have allowed for the meaningful participation of noncontracting countries as well as other bodies in its meetings and activities through granting of observer status: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) meaningful participation by the Government of Taiwan as an observer in the meetings and activities of the International Civil Aviation Organization (ICAO) will contribute both to the fulfillment of the ICAO's overarching mission and to the success of a global strategy to address aviation security threats based on effective international cooperation;

(2) the United States Government should take a leading role in gaining international support for the granting of observer status to Taiwan in the ICAO for the purpose of such participation; and

(3) the Department of State should provide briefings to or consult with Congress on any efforts conducted by the United States Government in support of Taiwan's progress toward observer status in the ICAO.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4063. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4064. Mr. MENENDEZ (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. LEAHY, and Mr. JOHNSON) 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 4065. Mr. MENENDEZ submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4066. Mr. FEINGOLD 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 4067. Mr. FEINGOLD 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 4068. Mr. LEAHY 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 4069. Mrs. GILLIBRAND 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 4070. Mr. CORNYN 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 4071. Mr. CARPER (for himself, Mr. BAYH, 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.

SA 4072. Mr. GRASSLEY (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.

SA 4073. Mr. ENZI (for himself, Mr. SHELBY, and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4074. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 3962 submitted by 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) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4075. Ms. LANDRIEU (for herself, Mr. DODD, and Mr. KERRY) submitted an amendment intended to be proposed by her to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4076. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4077. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, 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 4078. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, 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 4079. 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 4080. Mr. ENSIGN 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 4081. Mr. HATCH 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 4082. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4083. 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 4084. 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 4085. Mr. HARKIN (for himself, Mr. SANDERS, Mr. WHITEHOUSE, Mr. UDALL, of New Mexico, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4086. Ms. CANTWELL (for herself and Mrs. LINCOLN) 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 4087. Mr. PRYOR 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 4088. 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 4089. Mr. CHAMBLISS 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 4090. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4091. Mr. JOHNSON (for himself, Ms. LANDRIEU, Mr. BURRIS, Mr. BROWNBACK, Ms. MURKOWSKI, Mr. CRAPO, Mr. ROBERTS, Mr. COBURN, Mr. TESTER, Mr. BROWN of Ohio, Mr. NELSON of Nebraska, Mr. CARDIN, and Mr. BENNETT) 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 4092. Mr. CHAMBLISS (for Mrs. LINCOLN) submitted an amendment intended to be proposed by Mr. CHAMBLISS to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4093. Mr. NELSON of Florida 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 4094. Mr. NELSON of Florida 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 4095. Mr. NELSON of Florida (for himself and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4096. Mr. LEVIN (for himself, Mr. KAUFMAN, and 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 4097. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) 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 4098. Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, 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 4099. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) 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 4100. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4101. Mr. MERKLEY (for himself 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 4102. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4103. Mr. BURRIS 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 4104. Mr. MENENDEZ (for himself, Mr. BAYH, and 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 4105. Mr. DURBIN 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 4106. Mr. MERKLEY submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4107. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4108. Mr. WARNER submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4109. Mr. DORGAN 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 4110. Mr. DODD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD

(for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4111. Ms. STABENOW 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 4112. Mr. MERKLEY (for himself 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 4113. Mrs. FEINSTEIN 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 4114. Mr. DORGAN proposed an amendment to amendment SA 4072 submitted by Mr. GRASSLEY (for himself and Mrs. MCCASKILL) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

TEXT OF AMENDMENTS

SA 4063. Mr. WYDEN 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 30, between lines 11 and 12, insert the following:

(3) ADDITIONAL VIEWS.—In the annual report required by paragraph (2)(M), the Secretary shall provide additional views, which shall include—

(A) whether the Secretary agrees with the recommendations of the Council and the views of the Council on the financial markets and potential emerging threats;

(B) if the Secretary disagrees with any aspect of the report of the Council, the Secretary's own views, analysis, and recommendations; and

(C) recommendations regarding whether there should be changes made to the laws and rules in place at the time at which the annual report is delivered to Congress to promote the integrity, efficiency, and stability of the United States financial markets or a determination from the Secretary that the laws and rules in place at the time at which the annual report of the Council is delivered to Congress are optimal to achieve the integrity, efficiency, and stability of the United States financial markets.

SA 4064. Mr. MENENDEZ (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. LEAHY, and Mr. JOHNSON) 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 372, between lines 2 and 3, insert the following:

SEC. 343. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by inserting after section 114 (12 U.S.C. 4713) the following:

''SEC. 114A. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) ELIGIBLE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term 'eligible community development financial institution' means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

''(2) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term 'eligible community or economic development purpose'—

''(A) means any purpose described in section 108(b); and

''(B) includes the provision of community or economic development in low-income or underserved rural areas.

''(3) GUARANTEE.—The term 'guarantee' means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

''(4) LOAN.—The term 'loan' means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

''(5) MASTER SERVICER.—

''(A) IN GENERAL.—The term 'master servicer' means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

''(B) APPROVAL CRITERIA FOR MASTER SERVICERS.—The Secretary shall approve or deny any application to become a master servicer under the Program not later than 90 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—

''(i) loan administration, servicing, and loan monitoring;

''(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;

''(iii) managing regional or national originator communication systems and infrastructure;

''(iv) developing and implementing training and other risk management strategies on a regional or national basis; and

''(v) compliance monitoring, investor relations, and reporting.

''(6) PROGRAM.—The term 'Program' means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.

''(7) PROGRAM ADMINISTRATOR.—The term 'Program administrator' means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).

''(8) QUALIFIED ISSUER.—

''(A) IN GENERAL.—The term 'qualified issuer' means a community development financial institution (or any entity designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.

''(B) APPROVAL CRITERIA FOR QUALIFIED ISSUERS.—

''(i) IN GENERAL.—The Secretary shall approve a qualified issuer for a guarantee under the Program in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.

''(ii) TERMS AND QUALIFICATIONS.—A qualified issuer shall—

''(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

''(II) provide to the Secretary—

''(aa) an acceptable statement of the proposed sources and uses of the funds; and

''(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and

''(III) certify to the Secretary that the bonds or notes to be guaranteed are to be used for eligible community or economic development purposes.

''(C) DEPARTMENT OPINION; TIMING.—

''(i) DEPARTMENT OPINION.—Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the Secretary shall provide an opinion regarding compliance by the issuer with the requirements of the Program under this section.

''(ii) TIMING.—The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 90 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

''(9) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(10) SERVICER.—The term 'servicer' means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

''(b) GUARANTEES AUTHORIZED.—The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer, if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

''(1) for eligible community or economic development purposes; or

''(2) to refinance loans or notes issued for such purposes.

''(c) GENERAL PROGRAM REQUIREMENTS.—

''(1) IN GENERAL.—A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

''(2) RELENDING ACCOUNT.—Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

''(3) LIMITATIONS ON UNPAID PRINCIPAL BALANCES.—The proceeds of guaranteed bonds or

notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

''(A) community or economic development loans;

''(B) a relending account, to the extent authorized under paragraph (2); or

''(C) a risk-share pool established under subsection (d).

''(4) REPAYMENT.—If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

''(5) PROHIBITED USES.—The Secretary shall, by regulation—

''(A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and

''(B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—

''(i) the qualified issuer; or

''(ii) any recipient of amounts from the guarantee of a bond or note.

''(d) RISK-SHARE POOL.—Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

''(e) GUARANTEES.—

''(1) IN GENERAL.—A guarantee issued under the Program shall—

''(A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;

''(B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Government-guaranteed bonds, and satisfactory to the Secretary;

''(C) represent the full faith and credit of the United States; and

''(D) not exceed 30 years.

''(2) LIMITATIONS.—

''(A) ANNUAL NUMBER OF GUARANTEES.—The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

''(B) GUARANTEE AMOUNT.—The Secretary may not guarantee any amount under the Program equal to less than $100,000,000, but the total of all such guarantees in any fiscal year may not exceed $1,000,000,000.

''(f) SERVICING OF TRANSACTIONS.—

''(1) IN GENERAL.—To maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified Program administrators, bond servicers, and a master servicer.

''(2) DUTIES OF PROGRAM ADMINISTRATOR.—The duties of a Program administrator shall include—

''(A) approving and qualifying eligible community development financial institution applications for participation in the Program;

''(B) compliance monitoring;

''(C) bond packaging in connection with the Program; and

''(D) all other duties and related services that are customarily expected of a Program administrator.

''(3) DUTIES OF SERVICER.—The duties of a servicer shall include—

''(A) billing and collecting loan payments;

''(B) initiating collection activities on past-due loans;

''(C) transferring loan payments to the master servicing accounts;

''(D) loan administration and servicing;

''(E) systematic and timely reporting of loan performance through remittance and servicing reports;

''(F) proper measurement of annual outstanding loan requirements; and

''(G) all other duties and related services that are customarily expected of servicers.

''(4) DUTIES OF MASTER SERVICER.—The duties of a master servicer shall include—

''(A) tracking the movement of funds between the accounts of the master servicer and any other servicer;

''(B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;

''(C) monitoring the collection comments and foreclosure actions;

''(D) aggregating the reporting and distribution of funds to trustees and investors;

''(E) removing and replacing a servicer, as necessary;

''(F) loan administration and servicing;

''(G) systematic and timely reporting of loan performance compiled from all bond servicers' reports;

''(H) proper distribution of funds to investors; and

''(I) all other duties and related services that are customarily expected of a master servicer.

''(g) FEES.—

''(1) IN GENERAL.—A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Secretary, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

''(2) PAYMENT.—A qualified issuer shall pay the fee required under this subsection on an annual basis.

''(3) USE OF FEES.—Fees collected by the Secretary under this subsection shall be used to reimburse the Department of the Treasury for any administrative costs incurred by the Department in implementing the Program established under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

''(2) USE OF FEES.—To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Secretary may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

''(i) INVESTMENT IN GUARANTEED BONDS INELIGIBLE FOR COMMUNITY REINVESTMENT ACT PURPOSES.—Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901).

''(j) ADMINISTRATION.—

''(1) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Secretary shall promulgate regulations to carry out this section.

''(2) IMPLEMENTATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall implement this section.

''(k) TERMINATION.—This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.''.

SEC. 344. TAX EXEMPT STATUS OF CERTAIN BONDS.

(a) NO FEDERAL GUARANTEE.—Subparagraph (A) of section 149(b)(3) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''or'' at the end of clause (iii);

(2) by striking the period at the end of clause (iv) and inserting '', or''; and

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

''(v) any guarantee of a qualified community development financial institution bond provided by the Department of the Treasury.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of enactment of this Act.

SA 4065. Mr. MENENDEZ 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 bill, add the following:

TITLE XIV—EMERGENCY LIQUIDITY FUND

SEC. 1401. SHORT TITLE.

This title may be cited as the ''Emergency Liquidity Fund''.

SEC. 1402. PURPOSES.

The purposes of this title are—

(1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity in the community development financial system of the United States;

(2) to ensure that such authority and such facilities are used in a manner that—

(A) promotes access to credit for small businesses;

(B) provides access to jobs, particularly for low and moderate income individuals;

(C) serves investment areas or targeted populations, as those terms are defined under the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

(D) provides public accountability for the exercise of such authority; and

(3) to provide grants to eligible entities and the necessary authority to the Secretary of the Treasury to enter into cooperative agreements that—

(A) support small business development;

(B) develop innovative local and regional programs to expand capital access for small businesses; and

(C) support local economic development and business diversification.

SEC. 1403. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term ''eligible community or economic development purpose''—

(A) means any purpose described in section 108(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

(B) includes the provision of community or economic development in low-income or underserved rural areas.

(2) ELIGIBLE ENTITY.—

(A) IN GENERAL.—The term ''eligible entity'' included community development financial institutions, as such institutions are described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto.

(B) ADDITIONAL AUTHORITY OF SECRETARY.—The Secretary may further expand participation in any grant program established under

this title to include entities other than community development financial institutions, if the Secretary, in his discretion, determines that such other entities meet eligible community or economic development purposes.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

SEC. 1404. AUTHORIZATION TO MAKE COMMITMENTS TO ASSIST ELIGIBLE ENTITIES.

(a) SPECIAL LIQUIDITY FACILITY.—

(1) IN GENERAL.—The Secretary is authorized to establish a special liquidity facility to make and fund commitments and to purchase assets related to eligible community or economic development purposes in accordance with—

(A) the purposes of this title; and

(B) the policies and procedures developed and published by the Secretary.

(2) RULE OF CONSTRUCTION.—Commitments made under paragraph (1) may include grants, loans, loan commitments, equity investments, agreements, and similar contracts or undertakings or a combination thereof.

(b) APPLICATIONS FOR ASSISTANCE.—An application for assistance under this title shall be submitted in such form and in accordance with such procedures as the Secretary shall establish.

(c) MATCHING REQUIREMENT.—Assistance provided to an eligible entity under this title shall be matched with funds from sources other than the Federal Government on the basis of not less than 1 dollar for every 2 dollars provided by the Secretary.

(d) LIMITATIONS.—

(1) ANNUAL NUMBER OF AWARDS.—The Secretary, acting through the special liquidity facility established under subsection (a), shall not issue more than 5 awards of assistance in any calendar year under the authorities established by this section.

(2) AWARD AMOUNT.—In carrying out the requirements of this section, the Secretary, acting through the special liquidity facility established under subsection (a), may not make an award to an eligible entity of less than $50,000,000.

(3) IMPLEMENTATION.—Not later than 1 year after the date of enactment of this title the Secretary shall issue rules and regulations implementing this section.

(e) FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $250,000,000 to carry out this section, to remain available until expended, for fiscal years 2010 through 2014.

SEC. 1405. APPROVAL CRITERIA FOR ELIGIBLE ENTITIES.

(a) IN GENERAL.—The Secretary shall approve an eligible entity for participation in the assistance program established under section 1404 in accordance with the requirements of this section, and such additional requirements as the Secretary may establish, by regulation.

(b) TERMS AND QUALIFICATIONS.—Recipients of amounts under section 1404 shall—

(1) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

(2) provide to the Secretary—

(A) an acceptable statement of the proposed sources and uses of the funds; and

(B) a capital distribution plan for eligible community and economic development purposes that details the following:

(i) Management Capacity, by providing the following:

(I) Experience deploying capital.

(II) Experience raising capital.

(III) Financial capacity and asset management capabilities.

(IV) Program compliance track-record.

(V) Community accountability.

(ii) Capitalization Strategy, by providing the following:

(I) Capital raising experience and track-record.

(II) Experience deploying capital.

(III) Strategy for raising investor capital.

(IV) Relationships with investors.

(V) Prospective sources and uses of capital.

(iii) Business strategy, by providing the following:

(I) Products, services ,and investment criteria.

(II) Community and economic development investment track-record.

(III) Financial projections or projected business activity.

(iv) Community impact, by providing the following:

(I) Ability to target areas of high unemployment.

(II) Ability to support job creation or job retention.

(III) Ability to further community revitalization.

(IV) Ancillary community benefits.

(v) Capacity, by demonstrating the following:

(I) Ability to distribute and utilize 25 percent of amounts received under this title not later than 1 year after receipt of such amounts.

(II) Ability to distribute and utilize 50 percent of amounts received under this title not later than 2 years after receipt of such amounts.

(III) Ability to distribute and utilize 80 percent of amounts received under this title not later than 5 years after receipt of such amounts.

SEC. 1406. BUSINESS-TO-BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—In accordance with this section, the Secretary may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(1) to expand business-to-business relationships between large and small businesses;

(2) to develop innovative local and regional programs to expand access to capital for small businesses;

(3) to provide businesses, directly or indirectly, with online information and a database of—

(A) public sector programs or private companies that are interested in mentor-protege programs or supplier diversity programs; and

(B) State-wide, local, or community-based business development programs;

(4) to collect, analyze, and publish data that tracks the impact of the coalition's programs on revenue and employment at participating businesses, including disadvantaged business enterprises;

(5) to foster communication and collaboration within and among the coalitions; and

(6) to support efforts to enhance the long-term financial stability of employees, the economic viability of communities, and business diversification within locales and regions.

(b) MATCHING REQUIREMENT.—The Secretary may make a grant to a coalition described under subsection (a) only if the grant shall be matched with funds from sources other than the Federal Government on the basis of not less than 1 dollar for each dollar provided by the Secretary under this section.

(c) FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $50,000,000, to carry out this section, including to pay the reasonable costs of administering the grant program established under this section, for each of fiscal years 2010 through 2015.

SEC. 1407. IMPLEMENTATION AND ADMINISTRATION.

(a) GENERAL AUTHORITIES AND DUTIES.—The Secretary shall—

(1) establish minimum standards for approved use of amounts made available under this title;

(2) provide technical assistance to eligible entities receiving amounts under this title;

(3) manage, administer, and perform necessary integrity functions for the grant programs established under this title; and

(4) ensure adequate oversight of the eligible entities that received amounts under this title.

(b) ADMINISTRATIVE FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $15,000,000 to carry out the administrative expenses associated with the grant programs established under title, including to pay reasonable costs of administering such programs. In administering this title and the grant programs established by this title, the Secretary is authorized to use the staff and resources of the Department of the Treasury.

(c) EXPEDITED CONTRACTING.—During the 1-year period beginning on the date of enactment of this title, the Secretary may enter into contracts without regard to any other provision of law regarding public contracts, for purposes of carrying out this title.

(d) TERMINATION OF SECRETARY'S PROGRAM ADMINISTRATION FUNCTIONS.—The authorities and duties of the Secretary to implement and administer this title shall terminate at the end of the 5-year period beginning on the date of enactment of this title.

SEC. 1408. REGULATIONS.

The Secretary may issue such regulations and other guidance as the Secretary determines necessary or appropriate to implement this title including, to define terms, to establish compliance and reporting requirements, and such other terms and conditions necessary to carry out the purposes of this title.

SA 4066. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, strike line 5 and all that follows through page 1291, line 9, and insert the following:

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) STUDY AND REPORT.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study and submit a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or

service providing for arbitration of any future dispute between the parties, if the Bureau determines that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The determination of the Bureau under this subsection shall be consistent with the study conducted under subsection (a).

(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) RULE OF CONSTRUCTION.—No other provision of Federal law shall be construed to preempt or otherwise affect the applicability of any regulation prescribed by the Bureau under subsection (b).

SA 4067. Mr. FEINGOLD 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 1455, after line 25, insert the following:

SEC. 1077. MANDATORY PREDISPUTE ARBITRATION RULEMAKING.

(a) SECTION 921.—Section 921 of this Act is amended to read as follows:

''SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.

''(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 918, is amended by adding at the end the following:

'''(i) AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.—The Commission shall—

'''(1) conduct a rulemaking on the use of agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between such customers or clients and such broker, dealer, or municipal securities dealer that arises under the securities laws or the rules of a self-regulatory organization; and

'''(2) if the Commission finds that prohibition of, or imposition of conditions or limitations on, the use of agreements described in paragraph (1) is in the public interest and for the protection of investors, promulgate rules or regulations to establish such prohibitions, conditions, or limitations.'.

''(b) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following:

'''(f) AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.—The Commission shall—

'''(1) conduct a rulemaking on the use of agreements that require customers or clients of any investment adviser to arbitrate any dispute between such customers or clients and such investment adviser that arises under the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or the rules of a self-regulatory organization; and

'''(2) if the Commission finds that prohibition of, or imposition of conditions or limitations on, the use of agreements described in paragraph (1) is in the public interest and for the protection of investors, promulgate rules or regulations to establish such prohibitions, conditions, or limitations.'.''

(b) SECTION 1028.—Section 1028 of this Act is amended to read as follows:

''SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

''(a) STUDY AND REPORT.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study and submit a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

''(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau determines that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The determination of the Bureau under this subsection shall be consistent with the study conducted under subsection (a).

''(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

''(d) RULE OF CONSTRUCTION.—No other provision of Federal law shall be construed to preempt or otherwise affect the applicability of any regulation prescribed by the Bureau under subsection (b).''.

SA 4068. Mr. LEAHY 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 89, after line 23, insert the following:

(5) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

On page 153, line 4, strike ''and''.

On page 153, line 16, strike the period and insert ''; and''.

On page 153, after line 16, insert the following:

(IV) if the Secretary, in consultation with the Chairman of the Board of Governors, has found that the Corporation must act immediately with regard to the covered financial company (including any covered financial company that is an insurance company) to preserve financial stability, the approval and prior notification referred to in subclauses (II) and (III) shall not be required and the transaction may be consummated immediately by the Corporation, provided that nothing in this subclause shall otherwise modify, impair, or supersede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition).

On page 264, strike line 6, and insert the following:

REVIEW.—

(A) IN GENERAL.—If a transaction involving the merger or

On page 264, after line 25, insert the following:

(B) EMERGENCY.—If the Secretary, in consultation with the Chairman of the Board of Governors, has found that the Corporation must act immediately with regard to the bridge financial company (including any bridge financial company that is an insurance company) to preserve financial stability, the approval and prior notification referred to in subparagraph (A) shall not be required and the transaction may be consummated immediately by the Corporation. The preceding sentence shall not otherwise modify, impair, or supersede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition).

On page 296, after line 15, insert the following:

(d) ANTITRUST SAVINGS CLAUSE.—Unless otherwise provided, nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For the purposes of this Act, the term ''antitrust laws'' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

On page 441, after line 12, insert the following:

''(iii) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of this paragraph shall be treated as if Board of Governors approval is not required.''.

On page 567, lines 7 and 8, strike '', subject to the requirements of section 5(b)''.

SA 4069. Mrs. GILLIBRAND 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, line 25, strike the second period and insert the following: ''.

(7) STUDY AND REPORT ON PAPER STATEMENT CHARGES.—Not later than 6 months after the designated transfer date, the Office of Financial Literacy shall submit a report to Congress—

(A) on the charging of fees for paper copies of statements related to a consumer financial product or service by covered persons under this title;

(B) on the charging of fees for the use of paper checks as payment to financial institutions;

(C) on the impact of the imposition of such fees on financial literacy, particularly among—

(i) the elderly;

(ii) low-income individuals; and

(iii) individuals that lack computer access; and

(D) that includes recommendations on how to ensure that the individuals described in subparagraph (C) are not negatively impacted by the imposition of fees to receive paper statements, including recommendations—

(i) on whether covered persons under this title should be—

(I) prohibited from charging fees for paper statements;

(II) prohibited from automatically enrolling individuals in e-statement or other electronic delivery programs without the express consent of the individual, in the manner described in section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001(c)(1)); and

(III) prevented from charging fees for the use of paper checks as payment; and

(ii) for proposed regulatory or statutory changes to ensure that such individuals are able to access paper copies of financial statements without fees or unnecessary hindrance.

SA 4070. Mr. CORNYN 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 1304, strike line 10 and all that follows through page 1310, line 16, and insert the following:

SEC. 1036. PROHIBITED ACTS.

It shall be unlawful for any covered person—

(1) to—

(A) advertise, market, offer, or sell a consumer financial product or service not in conformity with this title or applicable rules or orders issued by the Bureau;

(B) enforce, or attempt to enforce, any agreement with a consumer (including any term or change in terms in respect of such agreement), or impose, or attempt to impose, any fee or charge on a consumer in connection with a consumer financial product or service that is not in conformity with this title or applicable rules or orders issued by the Bureau; or

(C) engage in any unfair, deceptive, or abusive act or practice that violates this title or applicable rules or orders issued by the Bureau,

except that no person shall be held to have violated this paragraph solely by virtue of providing or selling time or space to a person placing an advertisement;

(2) to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) knowingly or recklessly to provide substantial assistance to another person in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

SEC. 1037. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other than sections 1044 through 1048, may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 1083, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) RESERVATION OF AUTHORITY.—No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this subsection, the term ''consumer protection regulation'' means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States in that State or in State court having jurisdiction over the defendant, to enforce provisions of this title or regulations issued thereunder and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued thereunder with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law, and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to a State-chartered entity.

(2) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), no provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(3) FEE STRUCTURE.—

(A) IN GENERAL.—Neither an attorney general of a State nor a State regulator may enter into a contingency fee agreement for legal services relating to a civil action or other proceeding under this section.

(B) DEFINITION.—For purposes of this paragraph, the term ''contingency fee agreement'' means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

SA 4071. Mr. CARPER (for himself, Mr. BAYH, 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; as follows:

On page 1309, strike line 15, and all that follows through page 1325, line 20 and insert the following:

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Except as provided in paragraph (2), the attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity.

(2) ACTION BY STATE AGAINST NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION TO ENFORCE RULES.—

(A) IN GENERAL.—Except as permitted under subparagraph (B), the attorney general (or equivalent thereof) of any State may not bring a civil action in the name of such State against a national bank or Federal savings association with respect to an act or omission that would be a violation of a provision of this title.

(B) ENFORCEMENT OF RULES PERMITTED.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State against a national bank or Federal savings association in any district court of the United States in the State or in State court that is located in that State and that has jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under a provision of this title and to secure remedies under provisions of this title or remedies otherwise provided under other law.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person as authorized by subsection (a) to enforce any provision of this title, including any regulation prescribed by the Bureau under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Bureau shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of enactment of this Act, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

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

''(1) NATIONAL BANK.—The term 'national bank' includes—

''(A) any bank organized under the laws of the United States; and

''(B) any Federal branch established in accordance with the International Banking Act of 1978.

''(2) STATE CONSUMER FINANCIAL LAWS.—The term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

''(3) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(b) PREEMPTION STANDARD.—

''(1) IN GENERAL.—State consumer financial laws are preempted, only if—

''(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

''(B) the State consumer financial law is preempted in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), and 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 and section 24 of the Federal Reserve Act (12 U.S.C. 371) do 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 or section 24 of the Federal Reserve Act (12 U.S.C. 371) 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 or section 24 of Federal Reserve Act (12 U.S.C. 371), 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:

''(h) 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 or section 24 of the Federal Reserve Act (12 U.S.C. 371) 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:

''(i) 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. (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 against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

''(j) 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(i) 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 4072. Mr. GRASSLEY (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; as follows:

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

''(e)(1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 4073. Mr. ENZI (for himself and Mr. SHELBY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, line 4, strike ''respectively.'' insert the following: ''respectively.

(s) CONSUMER PRIVACY.—Notwithstanding any other provision of this Act, the Bureau may not investigate an individual transaction to which a consumer is a party without the written permission of the consumer.

SA 4074. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 3962 submitted by 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) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 9, line 7, insert ''private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) and'' after ''premium for''.

SA 4075. Ms. LANDRIEU (for herself, Mr. DODD, and Mr. KERRY) submitted an amendment intended to be proposed by her to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title X, add the following:

SEC. ___. SMALL BUSINESS CONSULTATION.

(a) SMALL BUSINESS ADVISORY BOARD.—

(1) ESTABLISHMENT REQUIRED.—The Director shall establish a Small Business Advisory Board, which shall be responsible for advising and consulting with the Bureau regarding the effects of actions by the Bureau on small businesses. The Small Business Advisory Board may provide information on emerging practices in consumer financial products or services, including regional trends, and other matters of interest to small businesses.

(2) MEMBERSHIP.—In appointing the members of the Small Business Advisory Board, the Director shall seek representation of the interests of small businesses operating in various markets for consumer financial products and services, including depository institutions, credit unions, and non-depository institutions.

(3) MEETINGS.—The Small Business Advisory Board shall meet from time to time, at the call of the Director, but not less frequently than 4 times in each year.

(4) COMPENSATION AND TRAVEL EXPENSES.—Members of the Small Business Advisory Board who are not full time employees of the United States shall—

(A) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Small Business Advisory Board, including travel time; and

(B) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

(b) CONSIDERATION OF IMPACT ON SMALL BUSINESSES.—

(1) ANALYSIS.—When conducting an initial regulatory flexibility analysis or final regulatory flexibility analysis, as required under chapter 6 of part I of title 5, United States Code (commonly referred to as the ''Regulatory Flexibility Act'') regarding compliance burden on small entities, the Bureau shall provide a description of any increase in the cost of credit to small entities projected as a result of the proposed or final rule, as applicable, and any significant alternatives to the proposed or final rule which would accomplish the stated objectives of applicable statutes and which would minimize any increase in the cost of credit to small entities.

(2) REVIEW PANELS.—

(A) IN GENERAL.—If the Bureau prepares an initial regulatory flexibility analysis for a proposed rule, the Bureau, after publishing notice of the proposed rulemaking, shall follow the procedures specified in section 609(b) of title 5, United States Code, as if the Bureau were a covered agency.

(B) CONSIDERATION OF REVIEW PANEL REPORT.—The Bureau shall consider the report of the review panel issued under this paragraph and include in the adopting release of the final rule a description of the basis for any determination by the Bureau concerning any issues raised by the panel and any issue concerning the cost of credit to small entities, as required in paragraph (1).

(C) DEADLINE.—Notwithstanding any other provision of chapter 6 of part I of title 5, United States Code, the report of the review panel shall be submitted not later than 90 days after the date on which the Bureau notifies the Chief Counsel of Advocacy of the Small Business Administration concerning the proposed rule, and the Bureau may proceed with its rulemaking if such report is not timely submitted.

SA 4076. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

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

SEC. 1077. OVERSIGHT OF EFFORTS TO REDUCE MORTGAGE DEFAULTS AND FORECLOSURES.

(a) DEFINITIONS.—In this section—

(1) the term ''heads of appropriate agencies'' means the Secretary of the Treasury, Comptroller of the Currency, the Board of Governors, the Corporation, the National Credit Union Administration, the Council, the Director of the Bureau, the Office of Financial Research, the Federal Housing Finance Agency, and a representative of State banking regulators selected by the Secretary;

(2) the term ''mortgagee'' means—

(A) an original lender under a mortgage or the holder of a residential mortgage at the time at which that mortgage transaction is consummated;

(B) any affiliate, agent, subsidiary, successor, or assignee of an original lender under a mortgage or the holder of a residential mortgage at the time at which that mortgage transaction is consummated;

(C) any servicer of a mortgage; and

(D) any subsequent purchaser, trustee, or transferee of any mortgage or credit instrument issued by an original lender;

(3) the term ''Secretary'' means the Secretary of Housing and Urban Development;

(4) the term ''servicer'' means the person or entity responsible for servicing of a loan (including the person or entity who makes or holds a loan if such person or entity also services the loan); and

(5) the term ''servicing'' has the meaning given the term in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)).

(b) MONITORING OF HOME LOANS.—

(1) IN GENERAL.—The Secretary, in consultation with the heads of appropriate agencies, shall develop and implement a plan to monitor—

(A) conditions and trends in homeownership and the mortgage industry, in order to predict trends in foreclosures and to better understand other critical aspects of the mortgage market; and

(B) the effectiveness of public efforts to reduce mortgage defaults and foreclosures.

(2) REPORT TO CONGRESS.—Not later than 1 year after the development of the plan under paragraph (1), and each year thereafter, the Secretary shall submit a report to Congress that—

(A) summarizes and describes the findings of the monitoring required under paragraph (1); and

(B) includes recommendations or proposals for legislative or administrative action necessary—

(i) to increase the authority of the Secretary to levy penalties against any mortgagee, or other person or entity, who fails to comply with the requirements described in this section;

(ii) to improve coordination between public and private initiatives to reduce the overall rate of mortgage defaults and foreclosures; and

(iii) to improve coordination between initiatives undertaken by Federal, State, and local governments.

(c) NATIONAL DATABASE ON DEFAULTS AND FORECLOSURES.—

(1) IN GENERAL.—The Secretary, in consultation with the heads of appropriate agencies, shall develop recommendations for a national database on mortgage defaults and foreclosures that—

(A) provides information to Federal regulatory agencies on—

(i) mortgagees that generate home loans that go into default or foreclosure at a rate significantly higher than the national average for such mortgagees;

(ii) the factors associated with such higher rates; and

(iii) other factors and indicators that the Secretary determines are critical to monitoring the mortgage markets; and

(B) provides information to Federal, State, and local governments on loans, delinquencies, defaults, foreclosures, deeds in lieu of foreclosure, short sales, and sheriff sales that—

(i) is not otherwise readily available;

(ii) would allow for a better understanding of local, regional, and national trends; and

(iii) helps improve public policies that reduce defaults and foreclosures.

(2) CONSIDERATIONS.—In developing the recommendations under paragraph (1), the Secretary shall take into consideration privacy concerns and legal issues relating to such concerns, including the advisability of establishing rules relating to access, including public access, to information obtained under subsection (d).

(3) REPORT TO CONGRESS ON NATIONAL DATABASE.—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains—

(A) the recommendations developed under paragraph (1);

(B) an estimate of the cost of maintaining the database described in paragraph (1); and

(C) a reasonable timetable with a deadline by which a national database on mortgage defaults and foreclosures shall be established by the Secretary.

(d) PROVISION OF DATA.—

(1) DATA REPORT REQUIRED.—Not later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the heads of appropriate agencies, shall issue final rules that require each mortgagee or servicer that originates or services not fewer than 100 loans in the prior calendar year (or any other person that the Secretary determines can effectively provide the data described in paragraph (2)) to submit a report to the Secretary not less frequently than once each quarter that contains data the Secretary determines are necessary to carry out this section.

(2) CONTENTS OF REPORT.—Each report submitted under paragraph (1) shall contain data that—

(A) for each loan, use the identification requirements that are established under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) for data reporting, including—

(i) the date of origination;

(ii) the agency code of the originator;

(iii) the respondent identification number of the originator; and

(iv) the identifying number for the loan;

(B) describe the characteristics of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including—

(i) the loan-to-value ratio at the time of origination for each mortgage on the property; and

(ii) the type of mortgage, such as a fixed-rate or adjustable-rate mortgage; and

(C) include the performance outcome of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including—

(i) whether such home loan was in delinquency at any point in such 12-month period; and

(ii) whether any judicial or non-judicial foreclosure was initiated on such home loan during such 12-month period;

(D) are sufficient to establish for each home loan that at any point during the preceding 12 months had become 60 or more days delinquent with respect to a payment on any amount due under the home loan, or for which a judicial or non-judicial foreclosure was initiated, the interest rate on such home loan at the time of such delinquency or foreclosure;

(E) include information relating to foreclosures, including—

(i) the date of all foreclosures initiated by the mortgagee or servicer; and

(ii) the combined loan-to-value ratio of all mortgages on a home at the time foreclosure was initiated;

(F) for a home loan that is in foreclosure, include information on all actions, including loan modifications, taken to mitigate or resolve the problem that led to the initiation of foreclosure and all actions undertaken prior to initiation of a foreclosure to resolve a delinquency or default;

(G) identify each home loan for which foreclosure was completed in the preceding 12 months, including—

(i) foreclosures initiated in such 12-month period; and

(ii) the date of the foreclosure completion; and

(H) include any other information that the Secretary determines is necessary to carry out this section.

(3) COMPLIANCE PLAN AND REPORT.—The Secretary, in consultation with the heads of appropriate agencies, shall—

(A) develop a plan to monitor the compliance with the requirements established in this subsection; and

(B) submit to Congress a report on such plan.

(4) ESTABLISHMENT OF NATIONAL DATABASE.—The Secretary shall establish a national database on mortgage defaults and foreclosures by the deadline established in the report to Congress required by subsection (c)(3) and shall provide public access to such database or portions thereof, subject to the Secretary making reasonable efforts to ensure that such public disclosure adequately addresses privacy, confidentiality, or legal rights under Federal or State law that may reasonably be raised.

(e) CONSOLIDATED DATABASE.—Not later than 6 months after the establishment of the national database described in subsection

(d)(4), the Federal Financial Institutions Examination Council, or any successor thereto, shall create a consolidated database that establishes a connection between the data provided under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and the data provided under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2010 through 2014.

SA 4077. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, 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 384, strike line 1 and all that follows through page 387, line 3 and insert the following:

SEC. 407. FAMILY OFFICES.

(a) IN GENERAL.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking ''or (G)'' and inserting the following: ''; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H)''.

(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940, as added by this section, regarding the definition of the term ''family office'' shall provide for an exemption that—

(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act; and

(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices.

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 15 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.''.

SEC. 409. CUSTODY OF CLIENT ASSETS.

SA 4078. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, 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 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 15 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 4079. 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 71, strike lines 15 through 23 and insert the following:

(1) IN GENERAL.—

(A) AUTHORITY.—To assist the Office in assessing financial stability or otherwise carrying out the functions described in this subtitle, the Director may require, by subpoena, the production of the data requested under subsection (a)(1) and section 154(b)(1), upon a written finding by the Director that—

(i) such data is required to carry out the functions described under this subtitle;

(ii) attempts to obtain such data without the use of a subpoena have been unsuccessful; and

(iii) the Office has coordinated with such agency, as required under section 154(b)(1)(B)(ii).

(B) CONSIDERATIONS.—The Director shall take into consideration the burden imposed by the request of the Director under subparagraph (A).

SA 4080. Mr. ENSIGN 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 4081. Mr. HATCH 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, line 10, before the semicolon insert ''and shall certify that the costs of the rule will not be borne by the consumer''.

SA 4082. 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; which was ordered to lie on the table; as follows:

On page 1242, between lines 14 and 15, insert the following:

(7) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not have access to, or obtain copies of, any personally identifiable financial information relating to a consumer contained in the financial records of any covered person from a disclosure of such information by the covered person to the Bureau, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person to the Bureau; or

(ii) as may be specifically permitted or required under other provisions of law, and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978 to a disclosure by a covered person subject to this subsection, the covered person shall be treated as if it were a ''financial institution'', as that term is defined in section 1101 of that Act (12 U.S.C. 3401).

SA 4083. 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 485, strike line 1 and all that follows through page 489, line 13, and insert the following:

(2) the term ''insured depository institution'' does not include an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(3) the term ''proprietary trading''—

(A) means purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book (or such other portfolio as the Federal banking agencies may determine) of such institution, company, or subsidiary;

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments by or on behalf of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

(4) the term ''sponsoring'', when used with respect to a hedge fund or private equity fund, means—

(A) serving as a general partner, managing member, or trustee of the fund;

(B) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(b) PROHIBITION ON PROPRIETARY TRADING.—

(1) IN GENERAL.—Subject to the recommendations and modifications of the Council under subsection (g), and except as provided in paragraph (2) or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) EXCEPTED OBLIGATIONS.—

(A) IN GENERAL.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including obligations fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and modifications of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(3) EXCEPTION.—Notwithstanding paragraph (1), an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company may sponsor or invest in a hedge fund or a private equity fund, if—

(A) such institution, company, or subsidiary provides trust, fiduciary, or advisory services to the fund;

(B) the fund is sponsored and offered in connection with the provision of trust, fiduciary, or advisory services by such institution, company, or subsidiary to persons who are, or may be, customers or clients of such institution, company, or subsidiary;

(C) such institution, company, or subsidiary—

(i) does not acquire or retain an equity, partnership, or ownership interest in the fund; or

(ii) acquires or retains an equity, partnership, or ownership interest, if—

(I) on the date that is 12 months after the date on which the fund is established, the equity, partnership, or ownership interest is not greater than 10 percent of the total equity of the fund; and

(II) the aggregate equity investments by such institution, company, or subsidiary in the fund do not exceed 5 percent of Tier 1 capital of such institution, company, or subsidiary;

(D) such institution, company, or subsidiary does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), except on terms and under circumstances specified in section 23B of the Federal Reserve Act (12 U.S.C. 371c–1);

(E) the obligations of the fund are not guaranteed, directly or indirectly, by such institution, company, or subsidiary any affiliate of such institution, company, or subsidiary; and

(F) such institution, company, or subsidiary does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

SA 4084. 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 502, strike lines 4 through 14.

On page 502, between lines 15 and 16, insert the following:

(a) JOINT RULEMAKING.—

(1) DEFINITION OF TERMS.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules further defining the terms ''swap'', ''security-based swap'', ''swap dealer'', ''security-based swap dealer'', ''major swap participant'', ''major security-based swap participant'', and ''eligible contract participant'' and such other rules regarding such definitions as the Commodity Futures Trading Commission and the Securities and Exchange Commission determine are necessary and appropriate, in the public interest, and for the protection of investors.

(B) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may jointly prescribe rules defining the term ''swap'' or ''security-based swap'' to include transactions that have been structured to evade this title.

(2) TRADE REPOSITORY RECORD KEEPING.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules governing the books and records that are required to be kept and maintained regarding security-based swap agreements by persons that are registered as swap data repositories under the Commodity Exchange Act, including uniform rules that specify the data elements that shall be collected and maintained by each repository.

(3) CAPITAL AND MARGIN.—

(A) Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules imposing capital and margin requirements under the respective provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934 for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants for which there is not a prudential regulator.

(B) Notwithstanding any other provision of this title, prudential regulators, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules imposing capital and margin requirements under the respective provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934 for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants for which there is a prudential regulator.

(4) BOOKS AND RECORDS.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

(5) JOINT RULEMAKING UNDER THIS TITLE.—

(A) COMPARABLE RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be comparable to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.

(B) CONSULTATION WITH THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Prior to prescribing jointly any rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consult with the Board of Governors of the Federal Reserve System.

(6) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraphs (1), (2), (3), or (4) of subsection (a) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.

(7) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products similarly.

(8) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this title shall be construed to require the Commodity Futures Trading Commission and the Securities and Exchange Commission to adopt joint rules that treat functionally or economically different products identically.

(9) JOINT INTERPRETATION.—Any Commission interpretation of, or guidance regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

On page 502, line 15, strike ''**REVIEW OF**'' before ''**REGULATORY AUTHORITY**''.

On page 502, line 16, strike ''(a)'' and insert ''(b)''.

On page 502, line 17, insert ''subsection (a) and'' after ''provided in''.

On page 505, line 7, strike ''(b)'' and insert ''(c)''.

On page 506, strike line 23 and all that follows through ''any other'' on page 507, line 2, and insert the following:

(3) PROHIBITION ON CERTAIN FUTURES ASSOCIATIONS.—Notwithstanding any other

On page 507, strike line 14 and all that follows through page 508, line 2.

On page 508, line 3, strike ''(c)'' and insert ''(d)''.

On page 508, line 8, strike ''(a)'' and insert ''(b)''.

On page 508, line 9, strike ''(b)'' and insert ''(c)''.

On page 509, line 24, strike ''(a)(4) or (b)'' and insert ''(b)(4) or (c)''.

On page 510, line 8, strike ''(d)'' and insert ''(e)''.

On page 510, line 9, strike ''(b) and (c)'' and insert ''(c) and (d)''.

On page 511, line 3, strike ''(e)'' and insert ''(f)''.

On page 511, lines 3 and 4, strike ''(b) and (c)'' and insert ''(c) and (d)''.

On page 511, line 4, insert '' and including subsection (a)'' before '', the Commodity''.

On page 511, line 11, strike ''(f)'' and insert ''(g)''.

On page 511, strike line 20 and all that follows through page 512, line 2.

On page 524, line 6, insert ''issued pursuant to subsection (a)(3)(A)'' after ''other Commission''.

On page 524, lines 11 through 12, strike '', including an order or orders issued under subsection (a)(3)(A),''.

On page 528, lines 11 and 12, strike '', security futures product,''.

On page 528, strike lines 13 through 15.

On page 528, line 16, strike ''(iii)'' and insert ''(ii)''.

On page 528, line 16, strike ''(iv)'' and insert ''(iii)''.

On page 528, strike line 20 and all that follows through ''Act.'' on page 529, line 2.

On page 529, line 19, strike '', security futures product,''.

On page 529, strike lines 20 through 22.

On page 529, line 23, strike ''(III)'' and insert ''(II)''.

On page 530, line 1, strike ''(IV)'' and insert ''(III)''.

On page 530, strike line 5 and all that follows through ''Act.'' on line 13.

On page 530, lines 20 and 21, strike '', security futures product,''.

On page 530, strike line 22 and all that follows through page 531, line 3.

On page 531, line 5, strike ''(iv)'' and insert ''(ii)''.

On page 531, line 5, strike ''(IV) (as so redesignated)'' and insert ''(III)''.

On page 531, line 8, strike ''a semicolon'' and insert the following: ''the following: '; or' ''.

On page 531, line 11, strike ''; or'' and insert a period.

On page 531, strike line 12 and all that follows through ''Act.'' on line 15.

On page 548, lines 9 and 10, strike '', leverage contract authorized under section 19,'' and insert ''or''.

On page 548, line 11, insert ''traded on or subject to the rules of a board of trade designated as a contract market under section 5 or 5f'' after ''product''.

On page 551, strike line 24 and all that follows through page 552, line 14.

On page 552, line 15, strike ''(E)'' and insert ''(D)''.

On page 554, line 14, strike ''(F)'' and insert ''(E)''.

On page 557, line 20, strike ''define—'' and all that follows through ''the term'' on line 21, and insert ''define the term''.

On page 557, line 21, strike ''; and'' and insert a period.

On page 557, strike lines 22 through 24.

On page 563, line 25, after the first period, insert the following:

''(i) REGULATION OF SWAPS AS SECURITIES UNDER FEDERAL AND STATE LAW.—Nothing in this section or this Act shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements, as such agreements are defined in section 3(a)(79) of the Securities Exchange Act of 1934, and security-based swaps.''.

On page 565, line 17, strike ''and (g)'' and insert ''(g), (j), and (k)''.

On page 565, line 22, strike ''and (f)'' and insert ''(f), and (i)''.

On page 566, line 1, insert ''by their terms'' before ''to registered''.

On page 566, line 7, after the first period insert the following:

''(f) EXCLUSION FOR SECURITIES.—Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to any security other than a security-based swap.''.

On page 567, line 8, strike ''5(b)'' and insert ''5b''.

On page 616, line 15, strike ''books and records'' and insert ''information (including information on a real-time basis)''.

On page 616, line 18, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 617, between lines 15 and 16, insert the following:

''(ii) foreign financial regulatory authorities;''.

On page 617, line 16, strike ''(ii)'' and insert ''(iii)''.

On page 617, line 17, strike ''(iii)'' and insert ''(iv)''.

On page 629, line 15, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 631, between lines 10 and 11, insert the following:

''(ii) foreign financial regulatory authorities, as defined in section 3(a)(52) of the Securities Exchange Act of 1934;''.

On page 631, line 11, strike ''(ii)'' and insert ''(iii)''.

On page 631, line 12, strike ''(iii)'' and insert ''(iv)''.

On page 642, line 3, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 646, lines 16 and 17, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 647, lines 12 and 13, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 647, line 23, insert '', in consultation with the prudential regulators,'' after ''Commission''.

On page 650, lines 24 and 25, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 651, lines 24 and 25, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 652, lines 24 and 25, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 676, line 7, before the period insert ''taking into consideration the impact of public disclosure on market liquidity''.

On page 676, line 20, strike ''and''.

On page 677, line 2, strike the period and insert ''; and''.

On page 677, between lines 2 and 3, insert the following:

''(iii) make available to the Securities and Exchange Commission, upon request, all information, including a complete audit trail, relating to transactions in security-based swap agreements (as such term is defined in section 3(a)(79) of the Securities Exchange Act of 1934).''.

On page 714, line 10, strike ''amended—'' and all that follows through ''by striking'' on line 11, and insert ''amended by striking''.

On page 714, line 12, strike the semicolon and insert a period.

On page 714, strike lines 13 through 23.

On page 714, line 25, strike ''amended—'' and all that follows through ''by striking'' on page 716, line 1, and insert ''amended by striking''.

On page 715, line 2, strike the semicolon and insert a period.

On page 715, strike lines 3 through 23.

On page 717, line 9, insert ''or any agreement, contract, or transaction in one or more securities'' after ''security''.

On page 751, between lines 11 and 12, insert the following:

''(II) the Securities and Exchange Commission;''.

On page 751, line 12, strike ''(II)'' and insert ''(III)''.

On page 751, line 16, strike ''(III)'' and insert ''(IV)''.

On page 751, line 21, strike ''(IV)'' and insert ''(V)''.

On page 752, line 1, strike ''(V)'' and insert ''(VI)''.

On page 752, line 3, strike ''and'' after ''jurisdiction;''.

On page 752, line 4, strike ''(VI)'' and insert ''(VII)''.

On page 752, line 4, strike the period and insert ''; and''.

On page 752, between lines 4 and 5, insert the following:

''(VIII) a foreign financial regulatory authority.''.

On page 752, line 7, strike ''described in clause (i)'' and insert ''described in subclauses (I) through (VI) of clause (i)''.

On page 752, line 11, after the period insert the following: ''Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.''

On page 761, line 24, strike ''standards'' and insert ''principles''.

On page 767, line 18, insert ''(without regard to paragraph (47)(B)(x) of such section)'' after ''Exchange Act''.

On page 768, line 4, insert ''or single obligor on a loan'' after ''a security''.

On page 768, line 4, insert ''or obligors on loans'' after ''securities''.

On page 768, line 9, insert ''or obligor'' after ''issuer''.

On page 769, line 5, strike ''references,'' and insert ''reference or''.

On page 769, beginning line 6, strike '', or settles through the transfer'' and all that follows through ''other option'' on line 16 and insert ''a government security''.

On page 769, line 17, strike ''(D) MIXED SWAP.—The term'' and insert the following:

''(D) MIXED SWAP.—

''(i) IN GENERAL.—The term''.

On page 770, between lines 6 and 7, insert the following:

''(ii) RULE OF CONSTRUCTION.—A security-based swap shall not constitute, nor be construed to constitute, a mixed swap solely because the obligations or rights of 1 party to the swap agreement are defined by reference to 1 or more interest rates or currencies.

''(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term 'index' means an index or group of securities, including any interest therein or based on the value thereof.''.

On page 775, strike lines 7 through 19.

On page 776, after line 25, insert the following:

(c) CONFORMING AMENDMENTS TO GRAMM-LEACH-BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is amended in the material preceding paragraph (1), by striking ''Except as'' and all that follows through ''that—''and inserting the following: ''Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—''.

On page 776, line 1, strike ''(b)'' and insert ''(c)''

On page 777, line 1, strike ''(c)'' and insert ''(d)''.

On page 780, line 3, insert '', in each place that such terms appear'' before the semicolon.

On page 783, lines 5 through 6, strike '', subject to the requirements of section 5(b)''.

On page 783, line 8, insert ''registered'' before ''clearing agency''.

On page 786, line 14, strike ''accepted'' and insert ''approved''.

On page 789, line 22, strike ''listed'' and insert ''accepted''.

On page 790, line 15, strike ''authorize'' and insert ''authorizes''.

On page 790, line 16, strike ''list'' and insert ''accept''.

On page 794, line 9, strike ''from'' and insert ''for''.

On page 809, strike line 14 through 16, and insert the following:

''(k) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a clearing''.

On page 810, strike lines 3 through 18.

On page 832, line 5, strike ''as described in paragraph (68) of section 3(a)''.

On page 833 lines 18 and 19, strike ''or narrow-based security narrow-based security index''.

On page 834, line 1, strike ''narrow-based security''.

On page 834, line 3, strike ''and''.

On page 834, between lines 3 and 4, insert the following:

''(ii) any security or group or index of securities the price, yield, value or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap; and''.

On page 834, line 4, strike ''(ii)'' and insert ''(iii)''.

On page 834, line 4, strike ''security-based swap and any''.

On page 834, line 6, strike ''narrow-based security''.

On page 834, line 7, insert ''described under subparagraph (B)(ii)'' after ''securities''.

On page 834, line 13, strike ''or narrow-based security index''.

On page 834, lines 18 and 19, strike ''or narrow-based security index''.

On page 834, lines 20 and 21, strike ''or narrow-based security index''.

On page 843, between lines 8 and 9, insert the following:

''(II) foreign financial regulatory authorities;''.

On page 843, line 9, strike ''(II)'' and insert ''(III)''.

On page 843, line 9, strike ''(III)'' and insert ''(IV)''.

On page 843, lines 11 and 12, strike ''AND IDEMNIFICATION AGREEMENT''.

On page 843, line 15, strike ''(G)—'' and all that follows through ''the security-based'' on line 16, and insert the following: ''(G), the security-based''.

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 853, lines 6 and 7, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 854, lines 5 and 6, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 854, line 18, insert '', in consultation with the prudential regulators,'' after ''Commission''.

On page 857, lines 17 and 18, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 858, lines 15 and 16, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 859, lines 5 and 6, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 859, line 7, strike ''Securities and Exchange'' and insert ''Commodity Futures Trading''.

On page 886, line 4, insert ''or other derivative instrument'' after ''security-based swap''.

On page 886, lines 4 through 5, insert ''or has defined,'' after ''Commission may define,''.

On page 886, line 10, insert ''as the Commission may designate or has designated by rule'' after ''section (d)(1)''.

On page 886, line 14, strike ''(1)'' after ''13(f)''.

On page 886, line 15, strike ''(1)'' and all that follows through ''section (d)(1) of this section'' on line 20 and insert the following:

(1) in paragraph (1)—

(A) by inserting ''(A)'' after ''accounts holding''; and

(B) by inserting ''or (B) security-based swaps or other derivative securities that the Commission may determine or has determined by rule, having such values as the Commission, by rule, may determine'' after ''less than $10,000,000) as the Commission, by rule, may determine.''; and

(2) in paragraph (3), by striking ''section 13(d)(1) of this title'' and inserting ''subsection (d)(1) of this section and of security-based swaps or other derivative instruments that the Commission may determine by rule.''.

On page 892, line 23, strike ''the Commission'' and insert ''Unless the Commission is expressly authorized, the Commission''.

On page 892, line 24, insert ''any provision described in this subsection with respect to subtitle B'' after ''from''.

On page 892, line 24, strike ''the security-based swap provisions''.

On page 893, lines 1 and 2, strike ''except as expressly authorized under the provisions of that Act'' and insert ''with respect to paragraphs 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 79 of section 3(a), and sections 10B(a), 10B(b), 10B(c), 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), 17A(l); provided that the Commission also shall have exemptive authority under that Act with respect to security-based swaps as to the same matters that the Commodity Futures Trading Commission has under that Act with respect to swaps, including under section 4(c) of the Commodity Exchange Act''.

On page 893, line 2, after the first period insert the following:

''(d) EXPRESS AUTHORITY.—The Commission is expressly authorized to use any authority granted to the Commission under subsection (a) to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of this title, or of any rule or regulation thereunder, that applies to such person, security, or transaction solely because a 'security-based swap' is a 'security' under section 3(a).''.

On page 548, line 11, insert ''traded on or subject to the rules of a board of trade designated as a contract market under section 5 or 5f, leverage contract authorized under section 19,'' after ''product''.

On page 551, line 5, strike ''subparagraph (D)'' and insert ''other than a security-based swap as described in section 3(a)(68)(D) of the Securities Exchange Act of 1934''.

On page 616, line 2, insert ''**AND SECURITY-BASED SWAPS**'' after ''**AGREEMENTS**''.

On page 616, line 13, insert ''or security-based swaps (as defined in section 3(a)(68) of the Securities Exchange Act of 1934)'' after ''Act)''.

On page 616, line 16, insert ''or security-based swaps'' after ''agreements''.

On page 616, line 18, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 835, strike line 3 and all that follows through page 839, line 12.

On page 887, strike lines 8–25.

SA 4085. Mr. HARKIN (for himself, Mr. SANDERS, Mr. WHITEHOUSE, Mr. UDALL of New Mexico, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. FAIR ATM FEES.

(a) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 904(d)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)(3)) is amended—

(1) in subparagraph (A), by striking the subparagraph heading and inserting the following:

''(A) FEE DISCLOSURE.—'' ;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) REGULATION OF FEES.—The regulations prescribed under paragraph (1) shall require any fee charged by an automated teller machine operator for a transaction conducted at that automated teller machine to bear a reasonable relation to the cost of processing the transaction.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective not later than 6 months after the date of enactment of this Act.

(c) RULEMAKING.—The Bureau shall issue such rules as may be necessary to carry out this section, not later than 6 months after the date of enactment of this Act.

SA 4086. Ms. CANTWELL (for herself and Mrs. LINCOLN) 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 570, line 21, insert before ''In adopting'' the following: ''Except as provided in paragraphs (3) and (10), any swap that is required to be cleared is unlawful unless the swap is cleared.''.

On page 705, line 19, insert before the period the following: ''unless there is a knowing failure by a party to comply with, or reckless disregard for, the terms and conditions of section 2(f) or regulations of the Commission''.

On page 705, line 20, strike ''No agreement'' and insert the following: ''Unless there is a knowing failure by a party to comply with, or a reckless disregard for, the definition of the term 'swap' under section 1(a) or the requirements of section 2(h)(1), no agreement''.

On page 708, line 17, strike ''and other prudential requirements of this Act,''.

SA 4087. Mr. PRYOR 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 20, line 1, strike ''substantially'' and insert ''predominantly''.

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

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

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

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

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

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

(7)

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

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

(c) ANTI-EVASION.—

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

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

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

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

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

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

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

(4) TREATMENT AS A NONBANK FINANCIAL COMPANY.—

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

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

(d)

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

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

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

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

SA 4088. 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 ''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 486, strike lines 1 through 12 and insert the following:

(3) the term ''sponsoring''—

(A) when used with respect to a hedge fund or private equity fund, means—

(i) serving as a general partner, managing member, or trustee of the fund;

(ii) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(iii) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name; and

(B) does not include an activity of a banking entity with respect to a hedge fund or private equity fund, if—

(i) the banking entity provides bona fide trust, fiduciary or investment advisory services;

(ii) the fund is sponsored and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

(iii) the banking entity does not acquire or retain an equity interest, economic partnership interest, or ownership interest in the fund, other than a partnership or ownership interest acquired or retained solely in connection with the provision of bona fide trust, fiduciary, or investment advisory services;

(iv) the banking entity does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

(v) the obligations of the fund are not guaranteed, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity; and

(vi) the banking entity does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

SA 4089. Mr. CHAMBLISS 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 567, line 8, strike ''5(b)'' and insert ''5b''.

SA 4090. Mr. CORNYN 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. ___. STUDY AND REPORT ON A FEDERAL CHARTER FOR NONBANK FINANCIAL SERVICES BUSINESSES.

(a) STUDY REQUIRED.—The research unit established by the Director under section 1013 shall conduct a study on the feasibility of establishing a Federal charter for nonbank financial services businesses that offer credit products and other financial services and products to consumers and small businesses that are unbanked, underbanked, or have low credit scores, low credit ratings, or below average credit histories (in this section, referred to as ''underserved borrowers''), including an analysis of—

(1) common credit products and other financial services and products available to underserved borrowers and the true availability and costs of such products and services to all underserved borrowers;

(2) the true costs and expenses (including loan losses) of creditors in providing credit products and other financial services and products to underserved borrowers;

(3) the merits, both positive and negative, of establishing a Federal charter to enable nonbank financial services businesses to provide reasonable and fair credit products and other financial products and services to underserved borrowers in a manner that is economically viable to nonbank financial services businesses; and

(4) the potential statutory and regulatory framework for establishing a Federal charter for nonbank financial services businesses that could reduce the costs for such businesses to offer and deliver such products and services to underserved borrowers and provide underserved borrowers throughout the Nation with a reasonable and fair opportunity to access credit and other financial services and products, and in turn build their credit scores and histories.

(b) REPORT TO THE BUREAU.—Not later than 1 year after the date of enactment of this Act, the research unit established under section 1013 shall—

(1) provide to the Bureau a report on the results of the study conducted under subsection (a), together with—

(A) a recommendation as to whether or not it would be in the best interests of all underserved borrowers to establish a Federal charter for nonbank financial services businesses to provide credit products and other financial products and services to underserved borrowers; and

(B) a recommendation for the statutory and regulatory framework for such a charter; and

(2) make such report available to the public.

SA 4091. Mr. JOHNSON (for himself, Ms. LANDRIEU, Mr. BURRIS, Mr. BROWNBACK, Ms. MURKOWSKI, Mr. CRAPO, Mr. ROBERTS, Mr. COBURN, Mr. TESTER, Mr. BROWN of Ohio, Mr. NELSON of Nebraska, Mr. CARDIN, and Mr. BENNETT) 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 99, line 14, strike ''risks.'' and insert the following: ''risks, except that the Board of Governors may not prescribe standards under this title that limit fully secured extensions of credit by a Federal Home Loan Bank to any member or former member of the Federal Home Loan Bank made in compliance with the regulations of the Federal Housing Finance Agency.''

SA 4092. Mr. CHAMBLISS (for Mrs. LINCOLN) submitted an amendment intended to be proposed by Mr. CHAMBLISS to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title VIII and insert the following:

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the ''Payment, Clearing, and Settlement Supervision Act of 2010''.

SEC. 802. FINDINGS.

Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

SEC. 803. DEFINITIONS.

In this title, the following definitions shall apply:

(1) DESIGNATED ACTIVITY.—The term ''designated activity'' means a payment, clearing, or settlement activity (other than a payment, clearing, or settlement activity that is regulated by the Commodity Futures Trading Commission or the Securities and Exchange Commission) that the Council has designated as systemically important under section 804.

(2) DESIGNATED FINANCIAL MARKET UTILITY.—The term ''designated financial market utility'' means a financial market utility that the Council has designated as systemically important under section 804.

(3) FINANCIAL INSTITUTION.—The term ''financial institution'' means—

(A) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(D) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(E) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(F) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(G) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2);

(H) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(I) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(4) FINANCIAL MARKET UTILITY.—The term ''financial market utility'' means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(5) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

(A) IN GENERAL.—The term ''payment, clearing, or settlement activity'' means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions.

(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term ''financial transaction'' includes—

(i) funds transfers;

(ii) securities contracts;

(iii) contracts of sale of a commodity for future delivery;

(iv) forward contracts;

(v) repurchase agreements;

(vi) swaps;

(vii) security-based swaps;

(viii) foreign exchange swaps and forwards; and

(ix) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) the calculation and communication of unsettled financial transactions between counterparties;

(ii) the netting of transactions;

(iii) provision and maintenance of trade, contract, or instrument information;

(iv) the management of risks and activities associated with continuing financial transactions;

(v) transmittal and storage of payment instructions;

(vi) the movement of funds;

(vii) the final settlement of financial transactions; and

(viii) other similar functions that the Council may determine.

(6) SUPERVISORY AGENCY.—

(A) IN GENERAL.—The term ''Supervisory Agency'' means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, including—

(i) the Securities and Exchange Commission, with respect to a designated financial market utility that is registered with the Securities and Exchange Commission;

(ii) the Commodity Futures Trading Commission, with respect to a designated financial market utility that is registered with the Commodity Futures Trading Commission;

(iii) the appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act; and

(iv) the Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) MULTIPLE AGENCY JURISDICTION.—

(i) If a designated financial market utility is subject to the primary jurisdictional supervision of more than 1 agency listed in clauses (iii) or (iv) of subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.

(ii) If a designated financial market utility is subject to the primary jurisdictional supervision of more than 1 agency listed in clauses (i) through (iv) of subparagraph (A), and such designated financial market utility is registered with either the Commodity Futures Trading Commission or the Securities and Exchange Commission, the Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, shall be the Supervisory Agency for purposes of this title. If the designated financial market utility is registered with both the Commodity Futures Trading Commission and the Securities and Exchange Commission, then the agency which oversees the predominance of the payment, clearing, and settlement activities conducted by the designated financial market utility shall be the Supervisory Agency for purposes of this title.

(7) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms ''systemically important'' and ''systemic importance'' mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity

would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Council deems appropriate.

(b) RESCISSION OF DESIGNATION.—

(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or any rules or orders prescribed by the Council under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) CONSULTATION.—Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency.

(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

(B) NOTICE IN FEDERAL REGISTER.—The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) EMERGENCY EXCEPTION.—

(A) WAIVER OR MODIFICATION BY VOTE OF THE COUNCIL.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not less than ⅔ of all members then serving, including an affirmative vote by the Chairperson, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT DESIGNATED FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(1) the operations related to the payment, clearing, and settlement activities of designated financial market utilities other than designated financial market utilities for which the Supervisory Agency is either the Commodity Futures Trading Commission or the Securities and Exchange Commission; and

(2) the conduct of designated activities by financial institutions.

(b) RECOMMENDED STANDARDS.—

(1) IN GENERAL.—The Council may recommend risk management standards regarding the operations of payment, clearing, and settlement activities of designated financial market utilities for which the Commodity Futures Trading Commission or the Securities and Exchange Commission is the Supervisory Agency, taking into consideration relevant international standards and existing prudential requirements.

(2) PROCEDURE FOR RECOMMENDATION.—The Council shall consult with the Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, and shall provide notice to the public and opportunity for comment for any proposed recommendation under paragraph (1).

(3) CONSIDERATION AND IMPLEMENTATION.—The Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, may impose the standards recommended by the Council under paragraph (1), or shall explain in writing to the Council, not later than 90 days after the date on which it receives the Council's recommendation, why the agency has determined not to follow the recommendation of the Council.

(c) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) or recommended under subsection (b) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(d) SCOPE.—The standards prescribed under subsection (a) or recommended under subsection (b) may address areas such as—

(1) risk management policies and procedures;

(2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and

(6) other areas that the Board of Governors determines are necessary to achieve the objectives and principles in subsection (c).

(e) THRESHOLD LEVEL.—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(f) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions subject to the standards prescribed by the Board of Governors under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board of Governors.

SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.

(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) ADVANCES.—The Board of Governors may authorize a Federal Reserve Bank to provide to a designated financial market utility the same discount and borrowing privileges as the Federal Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(d) RESERVE REQUIREMENTS.—The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

(1) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide 60-days' advance notice to its Supervisory Agency and the Board of Governors of any proposed change to its rules, procedures, or operations that could, as defined in rules of the Board of Governors, materially affect, the nature or level of risks presented by the designated financial market utility.

(B) TERMS AND STANDARDS PRESCRIBED BY THE BOARD OF GOVERNORS.—The Board of Governors shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board of Governors may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) NOTICE OF OBJECTION.—The Supervisory Agency or the Board of Governors shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Board of Governors or the Supervisory Agency has an objection.

(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board of Governors receives the notice of proposed change; or

(ii) the date the Supervisory Agency or the Board of Governors receives any further information it requests for consideration of the notice.

(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency or the Board of Governors may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board of Governors providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board of Governors, or the date the Supervisory Agency or the Board of Governors receives any further information it requested, if the Supervisory Agency or the Board of Governors notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency or the Board of Governors.

(2) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency and the Board of Governors, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board of Governors may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or standards prescribed by the Board of Governors hereunder.

(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

(f) APPLICABILITY.—Nothing in this section shall be applicable to any designated financial market utility for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission. Notwithstanding the previous sentence, nothing in this subsection shall limit or be construed to limit the authority of the Board under section 13(3) of the Federal Reserve Act (12 U.S.C. 343).

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) For a designated financial market utility for which the Supervisory Agency is not the Commodity Futures Trading Commission or the Securities and Exchange Commission, the designated financial market utility's compliance with—

(A) this title; and

(B) the rules and orders prescribed by the Board of Governors under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—For purposes of enforcing the provisions of this section, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) BOARD OF GOVERNORS PARTICIPATION IN EXAMINATION.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board of Governors may at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may dispute the matter by referring the recommendation to the Council, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Council is unable to resolve the dispute under paragraph (3) within 30 days from the date of referral, the Board of Governors may, upon a vote of its members—

(A) exercise the enforcement authority referenced in subsection (c) as if it were the Supervisory Agency; and

(B) take enforcement action against the designated financial market utility.

(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Council and the Supervisory Agency, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to believe that—

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; or

(ii) the condition of a designated financial market utility, poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the

same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board of Governors shall provide written notice to the designated financial market utility's Supervisory Agency containing a detailed analysis of the action of the Board of Governors, with supporting documentation included.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to make the provisions of subsections (c), (d), (e), or (f) applicable with respect to any designated financial market utility for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The primary financial regulatory agency is authorized to examine a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this title and the rules and orders prescribed by the Board of Governors under this title.

(b) ENFORCEMENT.—For purposes of enforcing the provisions of this section, and the rules and orders prescribed by the Board of Governors under this section, a financial institution subject to the standards prescribed by the Board of Governors for a designated activity shall be subject to, and the primary financial regulatory agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the primary financial regulatory agency was the appropriate Federal banking agency for such insured depository institution.

(c) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the primary financial regulatory agencies to ensure that the rules and orders prescribed by the Board of Governors with respect to a designated activity under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

(ii) the rules or orders prescribed by the Board of Governors under this title.

(B) EXAMINATION BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the primary financial regulatory agency mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to enforce this title or the rules or orders prescribed by the Board of Governors under this title against a financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution

(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed by the Board of Governors under this title against any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Council of its belief under clause (i) with supporting documentation included;

(iii) requested the primary financial regulatory agency to conduct a prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the primary financial regulatory agency within 30 days after the date of the Board's notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the primary financial regulatory agency a reasonable opportunity to participate in the examination.

(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the primary financial regulatory agency take 1 or more specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the primary financial regulatory agency of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors notifying the primary financial regulatory agency of the Board's enforcement action.

(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 804.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Council may require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors and the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS DESIGNATED ACTIVITIES.—The Board of Governors and the Council may require 1 or more financial institutions subject to the standards prescribed by the Board of Governors for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors and the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board of Governors with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board of Governors under this title with respect to the designated activity.

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity as provided in subsections (a) and (b), the Board of Governors and the Council shall coordinate with the Supervisory Agency for a financial market utility or the primary financial regulatory agency for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors and the Council.

(2) SUPERVISORY REPORTS.—For purposes of the coordination required by paragraph (1), and notwithstanding any other provision of law, the Supervisory Agency, the primary financial regulatory agency, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) IN GENERAL.—If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the primary financial regulatory agency in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(2) RULE OF CONSTRUCTION.—Nothing in this section authorizes or shall be construed to authorize the Board of Governors or the Council to prescribe any recordkeeping or reporting requirements on designated financial market utilities for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Board of Governors, the Council, the primary financial regulatory agency, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information or data relating to such concerns.

(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the primary financial regulatory agency, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to other persons it deems appropriate, including the Secretary, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Council, the primary financial regulatory agency, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data under this section or by permitting the reports or data, or any copies thereof, to be used pursuant to this section.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors or the Council under this section and any materials prepared by the Board of Governors or the Council regarding its assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with its supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

SEC. 810. RULEMAKING.

The Board of Governors and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out the authorities and duties granted to the Board of Governors or the Council, respectively, under this title and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any primary financial regulatory agency, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment of this Act.

SA 4093. Mr. NELSON of Florida 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 296, between lines 15 and 16, insert the following:

(d) REPEAL OF SAFE HARBOR TREATMENT IN THE BANKRUPTCY CODE.—Title 11, United States Code, is amended—

(1) in section 103(a), by striking ''chapter'' and all that follows through ''apply'' and inserting ''chapter, sections 307, 362(n), 557, and 562 apply'':

(2) in section 362—

(A) in subsection (b)—

(i) by striking paragraphs (6), (7), (17), and (27);

(ii) by redesignating paragraphs (8) through (16) as paragraphs (5) through (13), respectively;

(iii) by redesignating paragraphs (18) through (26) as paragraphs (14) through (22), respectively;

(iv) by redesignating paragraph (28) as paragraph (23); and

(v) in the undesignated matter at the end, by striking ''(12) and (13)'' and inserting ''(9) and (10)''; and

(B) by striking subsection (o);

(3) in section 546—

(A) in subsection (e)—

(i) by striking ''101 or'';

(ii) by striking ''101, 741,'' and inserting ''741''; and

(iii) by inserting ''and except in a case under chapter 11 or 15,'' before ''the trustee'';

(B) in subsection (f), by inserting ''and except in a case under chapter 11 or chapter 15,'' before ''the trustee'';

(C) by striking subsections (g) and (j); and

(D) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(4) in section 548(d)(2)—

(A) by striking subparagraphs (C) through (E);

(B) in subparagraph (A), by adding ''and'' at the end; and

(C) in subparagraph (B), by striking the semicolon at the end and inserting a period;

(5) in section 553—

(A) in subsection (a), by striking ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'' each place that term appears; and

(B) in subsection (b), by striking ''Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561, if a'' and inserting ''If a'';

(6) by striking sections 555, 556, 559, 560, and 561 and inserting ''[Repealed].'';

(7) in the table of sections for subchapter III of chapter 5, by striking the items relating to sections 555, 556, 559, 560, and 561;

(8) in section 901—

(A) by striking ''555, 556,''; and

(B) by striking ''559, 560, 561,'';

(9) in section 1519, by striking subsection (f); and

(10) in section 1521, by striking subsection (f).

At the end of title II, add the following:

SEC. ___. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following:

''(43A) The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement, that is cleared by or subject to the rules of a clearing organization (as defined in section 201(c)(9)(D) of the Restoring American Financial Stability Act of 2010.''.

(b) LIMITATION ON STAY OF EXERCISE OF CERTAIN CONTRACTUAL RIGHTS.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this title, if the trustee does not assume or reject a qualified financial contract of the debtor within 3 days after the order for relief, the exercise of any contractual right of any counterparty to such qualified financial contract to cause the liquidation, termination, or acceleration of one or more qualified financial contracts because of a condition of the kind specified in section 365(e)(1), or to offset or net out any termination values or payment amounts arising under or in

connection with the termination, liquidation, or acceleration of one or more qualified financial contracts shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. During such 3-day period the trustee shall make a good faith effort to meet all margin, collateral, and settlement obligations of the debtor that arise under qualified financial contracts, other than any such obligation that is not enforceable against the trustee.''.

(c) LIMITATION ON AVOIDANCE OF TRANSFER.—Section 546(j) of title 11, United States Code, is amended to read as follows:

''(j) Notwithstanding any Federal or State law relating to the avoidance of preferential or fraudulent transfers, the trustee may not avoid any transfer of money or other property in connection with any qualified financial contract of the debtor, unless the transferee had actual intent to hinder, delay, or defraud the debtor, the creditors of the debtor, or the trustee.''.

SA 4094. Mr. NELSON of Florida 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 209, line 9, insert before the period the following: '', that is cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D))''.

SA 4095. Mr. NELSON of Florida 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 209, line 9, insert before the period the following: '', that is cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D))''.

On page 296, between lines 15 and 16, insert the following:

(d) REPEAL OF SAFE HARBOR TREATMENT IN THE BANKRUPTCY CODE.—Title 11, United States Code, is amended—

(1) in section 103(a), by striking ''chapter'' and all that follows through ''apply'' and inserting ''chapter, sections 307, 362(n), 557, and 562 apply'':

(2) in section 362—

(A) in subsection (b)—

(i) by striking paragraphs (6), (7), (17), and (27);

(ii) by redesignating paragraphs (8) through (16) as paragraphs (5) through (13), respectively;

(iii) by redesignating paragraphs (18) through (26) as paragraphs (14) through (22), respectively;

(iv) by redesignating paragraph (28) as paragraph (23); and

(v) in the undesignated matter at the end, by striking ''(12) and (13)'' and inserting ''(9) and (10)''; and

(B) by striking subsection (o);

(3) in section 546—

(A) in subsection (e)—

(i) by striking ''101 or'';

(ii) by striking ''101, 741,'' and inserting ''741''; and

(iii) by inserting ''and except in a case under chapter 11 or 15,'' before ''the trustee'';

(B) in subsection (f), by inserting ''and except in a case under chapter 11 or chapter 15,'' before ''the trustee'';

(C) by striking subsections (g) and (j); and

(D) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(4) in section 548(d)(2)—

(A) by striking subparagraphs (C) through (E);

(B) in subparagraph (A), by adding ''and'' at the end; and

(C) in subparagraph (B), by striking the semicolon at the end and inserting a period;

(5) in section 553—

(A) in subsection (a), by striking ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'' each place that term appears; and

(B) in subsection (b), by striking ''Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561, if a'' and inserting ''If a'';

(6) by striking sections 555, 556, 559, 560, and 561 and inserting ''[Repealed].'';

(7) in the table of sections for subchapter III of chapter 5, by striking the items relating to sections 555, 556, 559, 560, and 561;

(8) in section 901—

(A) by striking ''555, 556,''; and

(B) by striking ''559, 560, 561,'';

(9) in section 1519, by striking subsection (f); and

(10) in section 1521, by striking subsection (f).

At the end of title II, add the following:

SEC. ____. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following:

''(43A) The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement, that is cleared by or subject to the rules of a clearing organization (as defined in section 201(c)(9)(D) of the Restoring American Financial Stability Act of 2010.''.

(b) LIMITATION ON STAY OF EXERCISE OF CERTAIN CONTRACTUAL RIGHTS.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this title, if the trustee does not assume or reject a qualified financial contract of the debtor within 3 days after the order for relief, the exercise of any contractual right of any counterparty to such qualified financial contract to cause the liquidation, termination, or acceleration of one or more qualified financial contracts because of a condition of the kind specified in section 365(e)(1), or to offset or net out any termination values or payment amounts arising under or in connection with the termination, liquidation, or acceleration of one or more qualified financial contracts shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. During such 3-day period the trustee shall make a good faith effort to meet all margin, collateral, and settlement obligations of the debtor that arise under qualified financial contracts, other than any such obligation that is not enforceable against the trustee.''.

(c) LIMITATION ON AVOIDANCE OF TRANSFER.—Section 546(j) of title 11, United States Code, is amended to read as follows:

''(j) Notwithstanding any Federal or State law relating to the avoidance of preferential or fraudulent transfers, the trustee may not avoid any transfer of money or other property in connection with any qualified financial contract of the debtor, unless the transferee had actual intent to hinder, delay, or defraud the debtor, the creditors of the debtor, or the trustee.''.

SA 4096. Mr. LEVIN (for himself, Mr. KAUFMAN, and 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 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—

''(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 4097. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) 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.''; and

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SA 4098. Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, 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.—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.''.

SA 4099. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) 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 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.

SA 4100. 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; which was ordered to lie on the table; as follows:

On page 584, line 7, after the first period insert the following:

''(k) CLEARING REQUIREMENTS FOR CREDIT DEFAULT SWAPS.—Subject to the exemption requirements of paragraphs (9) and (10) of subsection (h), all credit default swaps that are swaps shall be cleared pursuant to the requirements of subsection (h)(1).

''(l) BAN ON RISKY UNDISCLOSED NAKED CREDIT DEFAULT SWAPS.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap that establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed jointly by the Commission and the Securities and Exchange Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's position in credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, is the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission shall

jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission and the Securities and Exchange Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as the Commission may prescribe.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as shall be prescribed jointly by the Commission and the Securities and Exchange Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, are the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale credit default swaps that are swaps.

''(2) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a security issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission shall jointly establish and adopt rules, regulations, or order, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

''(3) EFFECTIVE DATE.—This subsection shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission and the Securities and Exchange Commission may require disclosure and reporting of positions and holdings as set forth in this subsection at such earlier date as they may jointly determine.

''(m) PUBLIC REPORTING OF CREDIT DEFAULT SWAPS.—

''(1) IN GENERAL.—Notwithstanding paragraphs (8), (9), and (10) of subsection (h), the Commission and the Securities and Exchange Commission shall jointly adopt rules requiring public reporting by counterparties of all net notional amount of credit default swaps purchased or sold referencing a specific reference entity in an amount greater than 1 percent of the outstanding debt of that reference entity.

''(2) RULEMAKING.—The Commission and the Securities and Exchange Commission may adopt rules setting the public reporting requirement threshold of subparagraph (A) in an amount less than 1 percent and may set a lower reporting requirement threshold for credit default swaps purchased or sold on governmental entities. In adopting rules implementing this requirement, the Commission and the Securities and Exchange Commission shall require counterparties to report both hedged and unhedged positions. The Commission and the Securities and Exchange Commission shall prescribe rules to specify the form, manner, and timing of such reports.

''(3) FURTHER DEFINITION OF TERMS.—For purposes of this subsection, the Commission and the Securities and Exchange Commission shall jointly establish and adopt rules, regulation, or orders in accordance with the public interest, defining the terms 'credit default swap', 'reference entity', 'outstanding debt', 'net notional amount of credit default swaps', and 'governmental entities'.''.

On page 808, line 8, after the first period, insert the following:

''(e) CLEARING REQUIREMENTS FOR CREDIT DEFAULT SWAPS.—Subject to the exemption requirements of paragraphs (9) and (10) of subsection (a), all credit default swaps that are security-based swaps shall be cleared pursuant to the requirements of subsection (a)(1).

''SEC. 3C–1. BAN ON RISKY UNDISCLOSED NAKED CREDIT DEFAULT SWAPS.

''(a) PROHIBITION.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap that establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed jointly by the Commission and the Commodity Futures Trading Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's position in credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, is the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this section, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission and the Commodity Futures Trading Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as the Commission may prescribe.

''(5) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as shall be prescribed jointly by the Commission and the Commodity Futures Trading Commission, that—

''(A) the value of the security-based swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, are the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swap dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with

the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale credit default swaps that are security-based swaps.

''(b) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a security issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulations, or order, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

''(c) EFFECTIVE DATE.—This section shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission and the Commodity Futures Trading Commission may require disclosure and reporting of positions and holdings as set forth in this section at such earlier date as they may jointly determine.

''SEC. 3C–2. PUBLIC REPORTING OF CREDIT DEFAULT SWAPS.

''(a) IN GENERAL.—Notwithstanding paragraphs (8), (9), and (10) of section 3C(a), the Commission and the Commodity Futures Trading Commission shall jointly adopt rules requiring public reporting by counterparties of all net notional amount of credit default swaps purchased or sold referencing a specific reference entity in an amount greater than 1 percent of the outstanding debt of that reference entity.

''(b) RULEMAKING.—The Commission and the Commodity Futures Trading Commission may adopt rules setting the public reporting requirement threshold of subsection (a) in an amount less than 1 percent and may set a lower reporting requirement threshold for credit default swaps purchased or sold on governmental entities. In adopting rules implementing this requirement, the Commission and the Commodity Futures Trading Commission shall require counterparties to report both hedged and unhedged positions. The Commission and the Commodity Futures Trading Commission shall prescribe rules to specify the form, manner, and timing of such reports.

''(c) FURTHER DEFINITION OF TERMS.—For purposes of this section, the Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulation, or orders in accordance with the public interest, defining the terms 'credit default swap', 'reference entity', 'outstanding debt', 'net notional amount of credit default swaps', and 'governmental entities'.''.

On page 893, after line 25, insert the following:

SEC. 774. COUNCIL STUDY AND ACTION REGARDING CERTAIN PROHIBITIONS.

(a) IN GENERAL.—

(1) IN GENERAL.—The Financial Stability Oversight Council shall conduct a study of issues involving the purchase and sale of credit default swaps and naked credit default swaps.

(2) RULE OF CONSTRUCTION.—For purposes of this section, a naked credit default swap is a credit default swap entered into by a person that does not own the valid debt instrument or valid debt instruments referenced in the credit default swap or own a valid debt instrument or valid debt instruments of the issuer or borrower, or issuers or borrowers, referenced in the credit default swap, or a similar risk exposure.

(b) MATTERS TO BE ADDRESSED.—The study required under subsection (a) shall address—

(1) the impact of trading of credit default swaps on debt issuers, credit availability, financial markets, and the overall economy of the United States;

(2) the potential uses of naked credit default swaps;

(3) the potential systemic impact of short positions in naked credit default swaps;

(4) existing authority of regulators to address risks to market participants and systemic risk of credit default swaps and naked credit default swaps; and

(5) such other relevant matters as the Council deems necessary or appropriate to address.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, if the Financial Stability Oversight Council agrees by an affirmative vote of the majority of its members then serving to the conclusions and findings of the study required under subsection (a), and to any recommendations for legislative action the Council deems necessary and appropriate based on such conclusions and findings, the Council shall submit such report, together with such recommendations, to Congress.

(d) ACTION BY CHAIRPERSON OF THE COUNCIL.—Following receipt of the report required by subsection (c), and notwithstanding section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934, the Chairperson of the Council may make a written determination suspending, in whole or in part, the prohibitions of section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934.

(e) FINDING BY CHAIRPERSON OF THE COUNCIL.—Based upon the conclusions and findings of the study required under subsection (a), the Chairperson of the Council may make a written determination as provided in subsection (d) only upon a finding that the prohibitions in section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934 would have a material adverse effect on the financial markets and economy of the United States.

(f) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Chairperson of the Council shall submit any written determination made pursuant to subsection (d) to the Committees on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the United States Senate and the Committees on Financial Services and Agriculture of the United States House of Representatives. Any such written determination by the Chairperson of the Council shall not be effective until such determination has been submitted to the appropriate committees of Congress.

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, 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 holders 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 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, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.

''(c) EFFECTIVE DATE.—This section shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission may require any disclosure or reporting of information or data pursuant this section at such earlier date as the Commission may determine.''.

SA 4101. Mr. MERKLEY (for himself 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 484, strike line 16 and all that follows through page 497, line 8, and insert the following:

SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal

banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section

23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. 619A. STUDY OF BANK ACTIVITIES.

(a) STUDY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Federal banking agencies shall jointly review and prepare a report on activities that a banking entity may engage in under Federal and State law including activities authorized by statute and by order, interpretation and guidance.

(2) CONTENT.—In carrying out the study under paragraph (1), the Federal banking agencies shall review and consider—

(A) the type of activities or investment;

(B) any financial, operational, managerial, or reputation risks associated with or presented as a result of the banking entity engaged in the activity or making the investment; and

(C) risk mitigation activities undertaken by the banking entity with regard to the risks.

(b) REPORT AND RECOMMENDATIONS TO THE COUNCIL AND TO CONGRESS.—The appropriate Federal banking agencies shall submit to the Council, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate the study conducted pursuant to subsection (a) no later than 2 months after its completion. In addition to the information described in subsection (a), the report shall include recommendations regarding—

(1) whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the United States financial system;

(2) the appropriateness of the conduct of each activity or type of investment by banking entities; and

(3) additional restrictions as may be necessary to address risks to safety and soundness arising from the activities or types of investments described in subsection (a).

SEC. 619B. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4102. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, strike line 1 and all that follows through page 496, line 2, and insert the following:

(2) the term ''proprietary trading''—

(A) means purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book (or such other portfolio as the Federal banking agencies may determine) of such institution, company, or subsidiary, except that the Federal banking agencies may, for the purposes of this subparagraph, exclude from the definition of the term ''insured depository institution'' an institution that functions principally in a trust or fiduciary capacity; and

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal, or in the conduct of regulated insurance investments;

(3) the term ''sponsoring'', when used with respect to a hedge fund or private equity fund, means—

(A) serving as a general partner, managing member, or trustee of the fund;

(B) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(b) PROHIBITION ON PROPRIETARY TRADING.—

(1) IN GENERAL.—Subject to the recommendations of the Council under subsection (g), and except as provided in paragraph (2) or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) EXCEPTED OBLIGATIONS.—

(A) IN GENERAL.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other similar Government-sponsored enterprises, including obligations fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(d) INVESTMENTS IN SMALL BUSINESS INVESTMENT COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE THE PUBLIC WELFARE.—

(1) IN GENERAL.—A prohibition imposed by the appropriate Federal banking agencies under subsection (c) shall not apply with respect an investment otherwise authorized under Federal law that is—

(A) an investment in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(B) designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(e) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) COVERED TRANSACTIONS.—An insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may not enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with such hedge fund or private equity fund.

(2) AFFILIATION.—An insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) as if such institution, company, or subsidiary were a member bank and such hedge fund or private equity fund were an affiliate.

(f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR CERTAIN NONBANK FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations of the Council under subsection (g), the Board of Governors shall adopt rules imposing additional capital requirements and specifying additional quantitative limits for nonbank financial companies supervised by the Board of Governors under section 113 that engage in proprietary trading or sponsoring and investing in hedge funds and private equity funds.

(2) EXCEPTIONS.—The rules under this subsection shall not apply with respect to the trading of an investment that is otherwise authorized by Federal law—

(A) in obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(B) in obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other similar Government-sponsored enterprises, including obligations fully guaranteed as to principal and interest by such entities;

(C) in obligations of any State or any political subdivision of a State;

(D) in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(E) that is designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(g) COUNCIL STUDY AND RULEMAKING.—

(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this Act, the Council—

(A) shall complete a study of the definitions under subsection (a) and the other provisions under subsections (b) through (f), to assess the manner in which to implement this section so as to—

(i) promote and enhance the safety and soundness of depository institutions and the affiliates of depository institutions;

(ii) protect taxpayers and enhance financial stability by minimizing the risk that depository institutions and the affiliates of depository institutions will engage in unsafe and unsound activities;

(iii) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(iv) reduce inappropriate conflicts of interest between the self-interest of depository institutions, affiliates of depository institutions, and financial companies supervised by the Board, and the interests of the customers of such institutions and companies;

(v) not raise the cost of credit or other financial services, reduce the availability of credit or other financial services, or impose other costs on households and businesses in the United States;

(vi) limit activities that have caused undue risk or loss in depository institutions, affiliates of depository institutions, and financial companies supervised by the Board of Governors, or that might reasonably be expected to create undue risk or loss in such institutions, affiliates, and companies; and

(vii) appropriately accommodates the business of insurance within an insurance company subject to regulation in accordance with State insurance company investment laws;

(B) shall make recommendations regarding the definitions under subsection (a) and the implementation of other provisions under subsections (b) through (f).

(2) RULEMAKING.—Not earlier than the date of completion of the study required under paragraph (1), and not later than 9 months after the date of completion of such study—

(A) the appropriate Federal banking agencies shall—

(i) jointly issue final regulations implementing subsections (b) through (e); and

(ii) evaluate and consider any recommendations made by the Council pursuant to paragraph (1)(B); and

(B) the Board of Governors shall—

(i) issue final regulations implementing subsection (f); and

(ii) evaluate and consider any recommendations made by the Council pursuant to paragraph (1)(B).

SA 4103. Mr. BURRIS 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 1023, strike lines 12 through 18 and insert the following:

''(ii) the main assumptions and principles used in constructing procedures and methodologies, including—

''(I) qualitative methodologies and quantitative inputs;

''(II) assumptions about the correlation of defaults across obligors used in rating structured products; and

''(III) the 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if such assumptions were proven false or inaccurate, together with an analysis, using concrete examples, of how each of the 5 assumptions impacts the credit rating;

SA 4104. Mr. MENENDEZ (for himself, Mr. BAYH, and 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 615, line 18, strike ''all'' and all that follows through line 21, and insert the following: ''or to the registered swap data repositories, as the Commission may by rule prescribe, all information that is determined by the Commission to be necessary for each 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 and''.

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 ''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 or to the registered security-based swap data repositories, as the Commission may by rule prescribe, all information that is determined by the Commission to be necessary for each 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 and''.

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 ''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 4105. Mr. DURBIN 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 621, after line 23, insert the following:

(h) LINKING OF REGULATED CLEARING FACILITIES.—Section 5b(f)(1) of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended to read as follows:

''(1) IN GENERAL.—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this chapter with other regulated clearance facilities for the coordinated settlement of cleared transactions. In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.''.

SA 4106. Mr. MERKLEY 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. 1111. COMPLIANCE WITH OTHER RULES.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting before section 130 the following:

''SEC. 129B. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A creditor or other person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with consumer credit.''.

SEC. 1112. CONSUMER LEASING ACT OF 1976.

Section 183 of the Consumer Leasing Act of 1976 (15 U.S.C. 1667b) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 183. LESSEE LIABILITY AND LESSOR COMPLIANCE.''; and

(2) by adding at the end the following:

''(d) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—A lessor shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to the lessor in connection with consumer leases.''.

SEC. 1113. ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended by adding at the end the following:

''SEC. 922. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with electronic fund transfers.''.

SEC. 1114. FAIR CREDIT REPORTING ACT.

The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 615 the following:

''SEC. 615A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with consumer reports.''.

SEC. 1115. FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended by inserting after section 812 the following:

''SEC. 812A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with the collection of debt.''.

SEC. 1116. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

(a) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et. seq) is amended by inserting after section 12 the following:

''SEC. 13. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with settlement services or the servicing of federally related mortgage loans.''.

(b) JURISDICTION.—Notwithstanding section 1096(8) of this Act, section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended to read as follows:

''SEC. 16. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS; JURISDICTION; LIMITATIONS.

''Any action pursuant to the provisions of section 6, 8, 9, or 13 may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 6 and 1 year in the case of a violation of section 8, 9, or 13 from the date of the occurrence of the violation, except that actions brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.''.

SEC. 1117. HOMEOWNERS PROTECTION ACT OF 1998.

The Homeowners Protection Act of 1998 (12 U.S.C. 4901 et. seq) is amended by inserting after section 7 (12 U.S.C. 4906) the following:

''SEC. 7A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A servicer, mortgagee, or mortgage insurer shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with private mortgage insurance.''.

SEC. 1118. TRUTH IN SAVINGS ACT.

Section 269 of the Truth in Savings Act (12 U.S.C. 4308) is amended by adding at the end the following:

''(c) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—Any regulation promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 regarding disclosures, payment of interest, or periodic statements in connection with accounts within the scope this Act shall be considered a regulation pursuant to this Act.''.

SA 4107. Mr. WARNER 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:

Sec. 154(1)(A) is amended by inserting on page 69, line 4 after the word 'maintain' the following new language, 'within a single electronic database,'.

Sec. 154(b)(1) is amended by striking on page 70 line 3, subparagraph '(C)' and adding the following new subparagraph—

'(C) ADMINISTRATION AND USE OF DATA.—The database described in subparagraph (A) shall—

(i) use accurate data structures and taxonomies to allow for easy cross-referencing, compiling, and reporting of numerous data elements;

(ii) provide for filtering of data content to allow users to screen for events most relevant to identifying waste, fraud, and abuse, such as management changes and material corporate events;

(iii) provide geospatial analysis capabilities; and

(iv) provide for the daily collection of any data necessary to implement this subsection.

'(D) DATA STANDARD.—The Office shall adopt and require a single data standard for the submission of data to the Office by member agencies. The Office shall update the standard as necessary to address changes in technology over time. The standard shall—

(i) be common across all member agencies, to the maximum extent practicable;

(ii) be a widely accepted, non-proprietary, searchable, computer-readable format for business and financial data;

(iii) be consistent with and implement United States generally accepted accounting principles or Federal financial accounting standards (as appropriate), industry best practices, and Federal regulatory requirements; and

(iv) improve the transparency, consistency, and usability of business and financial information.

'(E) TRANSITION AND IMPLEMENTATION.—

(i) TRANSITION.—Not later than 60 days after date of enactment of this subsection, the Office, or the Secretary if a Director has not been confirmed, shall issue a request for proposal for the establishment of the database described in subparagraph (A) and award contract service as required by this subsection.

(ii) IMPLEMENTATION OF DATABASE.—The Office, or the Secretary, if a Director has not been confirmed, shall make operational the database described in subparagraph (A) not later than 180 days after the issuance of request for proposal under clause (i) of this subparagraph.'

(iii) FUTURE MODIFICATIONS.—Modifications to the database following its becoming operational shall be determined by the Office.

Sec. 154(b)(2) is amended by inserting on page 70, line 20 the following subparagraph and reletter accordingly—

(B) The Data Center shall make the database described in subparagraph (1)(A) of this section available to the Comptroller General of the United States and to the Special Inspector General and the Congressional Oversight Panel established under sections 121 and 125 of the Emergency Economic Stabilization Act respectively.'

SA 4108. Mr. WARNER 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:

Sec. 154(b)(1) is amended by striking on page 70 line 3, subparagraph '(C)' and adding the following new subparagraph—

'(C) DATA STANDARD.—The Office shall adopt and require a single data standard for submission of data to the Office by member agencies. The Office shall update the standard as necessary to address changes in technology over time. The standard shall—

(i) be common across all member agencies, to the maximum extent practicable;

(ii) be widely accepted, non-proprietary, searchable, computer-readable format for business and financial data;

(iii) be consistent with and implement United States generally accepted accounting principles or Federal financial accounting standards (as appropriate), industry best practices, and Federal regulatory requirements; and

(iv) improve the transparency, consistency, and usability of business and financial information.

SA 4109. Mr. DORGAN 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 893, after line 25, insert the following:

SEC. 774. CLEARING OF CREDIT DEFAULT SWAPS.

(a) CLEARING OF CREDIT DEFAULT SWAPS UNDER THE COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2), as amended by this title, is amended by adding at the end the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or

greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(A) EFFECTIVE DATE.—Subject to subparagraph (B), this subsection shall take effect on the earlier of—

''(i) the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010; or

''(ii) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(B) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this subsection is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this subparagraph shall not exceed 18 months.

''(5) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

(b) CLEARING OF CREDIT DEFAULT SWAPS UNDER SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C, as added by this title, the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(d) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(1) EFFECTIVE DATE.—Subject to paragraph (2), this section shall take effect on the earlier of—

''(A) the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010; or

''(B) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(2) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this section is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this paragraph shall not exceed 18 months.

''(e) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

SEC. 775. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, 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 holders 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 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, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

SA 4110. 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; which was ordered to lie on the table; as follows:

On page 515, between lines 11 and 12, insert the following:

(c) PROHIBITION ON PROPRIETARY TRADING.—No insured depository institution, or company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such depository institution or company may purchase or sell, or otherwise acquire or dispose of derivatives, including swaps, security-based swaps, mixed swaps, and security-based swap agreements except in accordance with section 619 of the Restoring American Financial Stability Act of 2010.

(d) STUDY AND REPORT.—

(1) STUDY.—The Financial Stability Oversight Council shall conduct a study of the impact of the prohibitions of this section on the swaps and security-based swaps markets, including the effect of such prohibitions on central clearing and exchange trading of standardized swaps.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, if the Financial Stability Oversight Council agrees by an affirmative vote of the majority of its members then serving to the conclusions and findings of the study required under paragraph (1), and to any recommendations for legislative action the Council deems necessary and appropriate based on such conclusions and findings, the Council shall make such report, together with such recommendations, available to the public.

(e) DETERMINATION AND FINDING.—

(1) DETERMINATION.—Following issuance of the report required under subsection (d) and based upon consideration of the findings and conclusions of the study mandated by such subsection, the Chairperson of the Financial Stability Oversight Council may make a written determination suspending, in whole or in part, the prohibitions of subsection (a) upon the consideration of the recommendations of such report and a finding that the prohibitions in subsection (a) would have a material adverse effect on the financial markets and economy of the United States.

(2) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Chairperson of the Financial Stability Oversight Council shall submit any written determination under this subsection, together with the report required under subsection (d), and any recommendations for legislative actions, to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives. Any such written determination by the Chairperson of the Financial Stability Oversight Council shall not be effective until such determination has been submitted to the appropriate committees of Congress described in the prior sentence.

(f) PRUDENTIAL MATTERS.—If the prohibition established under subsection (a) is suspended, in whole or in part, pursuant to subsection (e), the swaps entity shall conduct its swap, security-based swap, or other activities in compliance with such minimum standards as shall be prescribed in regulations issued by the prudential regulator of such swaps entity as appropriate and which are reasonably calculated to permit the swaps entity to conduct its swap, security-based swap, or other activities in a safe and sound manner and consistent with protecting taxpayers and the financial system of the United States.

(g) RULES.—In prescribing regulations described in subsection (f), the prudential regulator for a swaps entity shall consider the following factors:

(1) The expertise and managerial strength of the swaps entity, including systems for effective oversight of the swaps entity.

(2) The financial strength of the swaps entity.

(3) Systems for identifying, measuring, and controlling risks arising from the swaps entity's operations and activities.

(4) Systems for identifying, measuring, and controlling the swaps entity's participation in existing markets.

(5) Systems for controlling the swaps entity's participation or entry into in new markets and products.

(h) EFFECTIVE DATE.—Subject to subsection (e), the prohibition established under subsection (a) shall take effect 2 years after the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective.

SA 4111. Ms. STABENOW 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 707, line 19, strike the first period and insert the following:

''(6) RULES, REGULATIONS, AND ORDERS.—Notwithstanding any other provision of law, including any authority granted pursuant to this title or title VII of the Restoring American Financial Stability Act of 2010, the Commission, the Securities and Exchange Commission, or the appropriate Federal banking agencies shall not issue any rule, regulation, or order that would void, terminate, or require the renegotiation, modification, or amendment of any contract or transaction (including any related credit support arrangement) entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

SA 4112. Mr. MERKLEY (for himself 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 1054, between lines 10 and 11, insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4113. Mrs. FEINSTEIN 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 the table; as follows:

Beginning on page 699, strike line 20 and all that follows through page 704, line 13, 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. In adopting such rules and regulations, the commission shall consider: (i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and (ii) any previous commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

''(B) LINKED CONTRACTS.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

''(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

''(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

''(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

''(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

''(aa) the information that the foreign board of trade will make publicly available;

''(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

''(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

''(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

''(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

''(C) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.''.

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting ''or by subsection (e)'' after ''Unless exempted by the Commission pursuant to subsection (c)''; and

(2) by adding at the end the following:

''(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with subparagraphs (A) and (B) of subsection (b)(1).''.

SA 4114. Mr. DORGAN proposed an amendment to amendment SA 4072 submitted by Mr. GRASSLEY (for himself and Mrs. MCCASKILL) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. CLEARING OF CREDIT DEFAULT SWAPS.

(a) CLEARING OF CREDIT DEFAULT SWAPS UNDER THE COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2), as amended by this title, is amended by adding at the end the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(A) EFFECTIVE DATE.—Subject to subparagraph (B), this subsection shall take effect on the earlier of—

''(i) the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010; or

''(ii) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(B) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this subsection is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this subparagraph shall not exceed 18 months.

''(5) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

(b) CLEARING OF CREDIT DEFAULT SWAPS UNDER SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C, as added by this title, the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or

related to the direct or indirect purchase or sale of credit default swaps.

''(d) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(1) EFFECTIVE DATE.—Subject to paragraph (2), this section shall take effect on the earlier of—

''(A) the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010; or

''(B) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(2) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this section is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this paragraph shall not exceed 18 months.

''(e) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

SEC. 775. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, 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 holders 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 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, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, May 25, 2010, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the liability and financial responsibility issues related to offshore oil production, including the Deepwater Horizon accident in the Gulf of Mexico, including S. 3346, a bill to increase the limits on liability under the Outer Continental Shelf Lands Act.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by e-mail to Abigail_Campbell@energy.senate.gov.

For further information, please contact Linda Lance or Abigail Campbell.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on May 18, 2010, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LEAHY. 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 18, 2010, at 11 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. LEAHY. 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 May 18, 2010, at 2:30 p.m. in room 106 of the Dirksen Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on May 18, 2010, at 10 a.m., to hold a hearing entitled ''The New START Treaty.''

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. LEAHY. 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 ''ESEA Reauthorization: Supporting Student Health, Physical Education, and Well-Being'' on Tuesday, May 18, 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.

SELECT COMMITTEE ON INTELLIGENCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 18, 2010, at 2:30 p.m.

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

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Human Rights and the Law, be authorized to meet during the session of the Senate, on May 18, 2010, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Drug Enforcement and the Rule of Law: Mexico and Colombia.''

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

TO CLARIFY HEALTH CARE PROVIDED BY THE SECRETARY OF VETERANS AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 5014, which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5014) to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage.

Whereas the future security and prosperity of both nations depends on our continuing ability to work together in the spirit of our common values and long friendship: Now, therefore, be it

Resolved, That the Senate—

(1) warmly welcomes the President of Mexico, Felipe Calderon Hinojosa;

(2) believes that together, the Governments of Mexico and the United States can bring immense benefits to their people and make enormous contributions to addressing the global challenges of the 21st century;

(3) looks forward to the continuing progress in relations between the Governments and people of Mexico and the United States; and

(4) appreciates the social, economic, and cultural contributions of the Mexican community in the United States and desires closer relations between the people of the United States and the people of Mexico.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4115. Mr. MERKLEY (for himself and Mr. LEVIN) proposed an amendment to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

SA 4116. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4117. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3794 submitted by Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. SPECTER, and Mr. KAUFMAN) and intended to be proposed to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4118. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4119. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4120. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4121. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3746 proposed by Mr. WHITEHOUSE (for himself, Mr. MERKLEY, Mr. DURBIN, Mr. SANDERS, Mr. LEVIN, and Mr. BURRIS) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4122. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4123. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4124. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4125. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4126. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4127. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4128. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4129. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4130. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4131. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4132. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4133. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4134. Mr. REED submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4135. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4136. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4137. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4138. Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4139. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4140. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4141. Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4142. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4050 submitted by Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4143. Mr. DODD submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4144. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4145. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 3776 proposed by Mr. SPECTER (for himself, Mr. REED, Mr. KAUFMAN, Mr. DURBIN, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. MENENDEZ, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. FEINGOLD, and Mr. MERKLEY) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4146. Mr. ENSIGN proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4147. Mr. DODD (for Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. VOINOVICH)) proposed an amendment to the bill S. 920, to amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes.

TEXT OF AMENDMENTS

SA 4115. Mr. MERKLEY (for himself and Mr. LEVIN) proposed an amendment to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board

shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. ____. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4116. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

(g) FEDERAL RESERVE MAXIMUM RESERVE RATIOS.—Effective 90 days after the date of enactment of this Act, the authority of the Federal Reserve to vary the maximum reserve ratios for depository institutions shall be—

(1) 0 to 25 (with respect to transaction deposits); and

(2) 0 to 25 (with respect to time) deposits.

SA 4117. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3794 submitted by Mr. LEAHY (for himself, Mr. GRASSLEY, and Mr. SPECTER, and Mr. KAUFMAN) and intended to be proposed to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, strike line 24 and all that follows through page 11, line 8, and insert the following:

(c) AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.—Section 3730(h) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking ''or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter'' and inserting ''agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter''; and

(2) by adding at the end the following:

''(3) LIMITATION ON BRINGING CIVIL ACTION.—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.''.

(d) PROMOTING CRIMINAL ACCOUNTABILITY.—

(1) DEFINITIONS.—In this subsection, the terms ''Bureau'', ''consumer financial product or service'', ''designated transfer date'', and ''Federal consumer financial law'' have the meanings given those terms in section 1002.

(2) NOTICE AND COORDINATION.—

(A) NOTICE OF OTHER ACTIONS.—In addition to any notice required under section 1054(d), the Bureau shall notify the Attorney General concerning any action, suit, or proceeding to which the Bureau is a party, except an action, suit, or proceeding that involves the offering or provision of consumer financial products or services.

(B) COORDINATION.—In order to avoid conflicts and promote consistency regarding litigation of matters under Federal law, the Attorney General and the Bureau shall consult regarding the coordination of investigations and proceedings, including by negotiating an agreement for coordination by not later than 180 days after the designated transfer date. The agreement under this subparagraph shall include provisions to ensure that parallel investigations and proceedings involving the Federal consumer financial laws are conducted in a manner that avoids conflicts and does not impede the ability of the Attorney General to prosecute violations of Federal criminal laws.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Bureau under title X, including the authority to interpret Federal consumer financial law.

SA 4118. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after (a), add the following:

EXCLUSION FOR AUTO DEALERS.

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

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages and self-financing transactions involving real property;

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(A) the extension of retail credit or retail leases are provided directly to consumers; and

(B) the contract governing such extension of retail credit or retail leases is not predominantly assigned to a third-party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of this Act, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

(e) COORDINATION WITH OFFICE OF SERVICE MEMBER AFFAIRS.—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

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

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person or resident in the United States, or any territory of the United States, who is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

SA 4119. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1032, strike lines 7 through 11 and insert the following:

(7) CREDIT.— The term ''credit'' means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

SA 4120. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1032, strike lines 7 through 11 and insert the following:

(7) CREDIT.—The term ''credit'' means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

SA 4121. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3746 proposed by Mr. WHITEHOUSE (for himself, Mr. MERKLEY, Mr. DURBIN, Mr. SANDERS, Mr. LEVIN, and Mr. BURRIS) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN))

to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1032, strike lines 7 through 11 and insert the following:

(7) CREDIT— The term ''credit'' means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

SA 4122. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4123. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4124. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4125. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include

a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4126. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this

section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. __. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4127. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. __. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no

force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

"SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity

fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. (i). CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4128. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that

such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. __. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4129. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. __. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent

application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and commited to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership

interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies,

the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. __. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4130. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4131. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, line ____, of the amendment insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4132. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. __. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment

Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. ___—.(i) CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4133. Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

''(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

''(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as

defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

''(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered,

directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

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''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

''(h) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

''(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

''(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

''(C) to share with a fund, for corporate, marketing, promotional, or other purposes,

the same name or a variation of the same name.

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. __. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4134. Mr. REED submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

(g) EXCLUSION NOT APPLICABLE TO MILITARY LENDING.—

(1) IN GENERAL.—Subsection (a) shall not apply to any person that extends credit or arranges for the extension of retail credit or retail leases—

(A) subject to paragraph (2), to a consumer who is a covered member of the Armed Forces or a dependent of a covered member of the Armed Forces, as such terms are defined in section 670(a) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 987(i)(1) and 10 U.S.C. 987(i)(2)); or

(B) for the purchase or lease of motor vehicles if such person sells, leases, or otherwise delivers motor vehicles to consumers from a physical location that is within 50 miles of a United States military installation.

(2) RULE OF CONSTRUCTION.—A person shall be deemed to comply with the exclusion under subparagraph (1)(A) if such person uses reasonable and appropriate procedures, in accordance with rules prescribed by the Bureau, to determine that all applicants are not consumers described in subparagraph (1)(A).

SA 4135. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

SEC. _____. PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.

(a) PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end following:

''(n) PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.—

''(1) IN GENERAL.—Any person who sells, transfers, or plans to sell or transfer at least 1,000 mortgages, mortgage-backed securities, or similar financial instruments within a calendar year shall not include or reference in any of such financial instruments any mortgage in which the loan balance may negatively amortize.

''(2) APPLICABILITY.—This subsection does not apply to home equity conversion mortgages, as defined under section 255 of the National Housing Act (commonly referred to as 'reverse mortgages') that are otherwise regulated by a Federal or State agency.

''(3) RULE OF CONSTRUCTION.—As used in this section, the term 'mortgage' shall not be construed to be restricted or limited only to mortgages referred to in section 103(aa).''.

(b) EFFECTIVE DATE.—The requirements under subsection (n)(1) of section 129 of the Truth in Lending Act (as added by subsection (b)) shall take effect not later than 180 days after the date of the enactment of this Act.

SA 4136. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

SEC. ___. RELIANCE ON REPORTS.

Notwithstanding section 932, section 15E(s)(4) of the Securities Exchange Act (15 U.S.C. 78o-7), as amended by section 932, is amended by adding at the end the following:

''(E) NO RELIANCE ON INADEQUATE REPORT.—A nationally recognized statistical rating organization may not rely on a third-party due diligence report if the nationally recognized statistical rating organization has reason to believe that the report is inadequate.''.

SA 4137. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

SEC. ___. STANDARDS AND OVERSIGHT.

Notwithstanding section 932, section 15E(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(c)(2)) is amended to read as follows:

''(2) STANDARDS AND OVERSIGHT.—The Commission shall set standards and exercise oversight of the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations, to ensure that the credit ratings issued by the nationally recognized statistical rating organizations have a reasonable foundation.''.

SA 4138. Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

SEC. ___. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G, as added by this Act, the following new section:

''SEC. 15H. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holder of the security.

''(b) RESTRICTION.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no substantial or material economic purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine whether a synthetic asset-backed security meets the requirements of this section. A determination by the Commission under the preceding sentence is not subject to judicial review.''.

SA 4139. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

SEC. ___. FDIC EXAMINATION AUTHORITY.

(a) EXAMINATION AUTHORITY FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking ''whenever the Board'' and all that follows through the period at the end and inserting the following: ''or depository institution holding company whenever the Chairperson or the Board of Directors determines that a special examination of any such depository institution or depository institution holding company is necessary to determine the condition of such depository institution or depository institution holding company for insurance purposes or for purposes of title II of the Restoring American Financial Stability Act of 2010.''.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (1)—

(A) by striking ''based on an examination of an insured depository institution'' and inserting ''based on an examination of an insured depository institution or depository institution holding company''; and

(B) by striking ''with respect to any insured depository institution or'' and inserting ''with respect to any insured depository institution, depository institution holding company, or'';

(2) in paragraph (2)—

(A) by striking ''Board of Directors determines, upon a vote of its members,'' and inserting ''Board of Directors, upon a vote of its members, or the Chairperson determines'';

(B) in subparagraph (B), by striking ''or'' at the end;

(C) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund or of the exercise of authority under title II of the Restoring American Financial Stability Act of 2010, or may prejudice the interests of the depositors of an affiliated institution.'';

(3) in paragraph (3)(A), by striking ''upon a vote of the Board of Directors'' and inserting ''upon a determination by the Chairperson or upon a vote of the Board of Directors'';

(4) in paragraph (4)(A)—

(A) by striking ''any insured depository institution'' and inserting ''any insured depository institution, depository institution holding company,''; and

(B) by striking ''the institution'' and inserting ''the institution, holding company,'';

(5) in paragraph (4)(B), by striking ''the institution'' each place that term appears and inserting ''the institution, holding company,''; and

(6) in paragraph (5)(A), by striking ''an insured depository institution'' and inserting ''an insured depository institution, depository institution holding company,''.

(c) BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

''SEC. 51. BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.

''The Corporation may conduct a special examination of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, if the Chairperson or the Board of Directors determines an examination is necessary to determine the condition of the company for purposes of title II of that Act.''.

(d) ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act is amended by adding at the end the following:

''SEC. 52. ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

''(a) ACCESS TO INFORMATION.—The Corporation may, if the Corporation determines that such action is necessary to carry out its responsibilities relating to deposit insurance or orderly liquidation under this Act, title II of the Restoring American Financial Stability Act of 2010, or otherwise applicable Federal law—

''(1) obtain information from an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010;

''(2) obtain information from the appropriate Federal banking agency, or any regulator of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, including examination reports; and

''(3) participate in any examination, visitation, or risk-scoping activity of an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010.

''(b) ENFORCEMENT.—The Corporation shall have the authority to take any enforcement action under section 8 against any institution or company described in paragraph (1) of subsection (a) that fails to provide any information requested under that paragraph.

''(c) USE OF AVAILABLE INFORMATION.—The Corporation shall use, in lieu of a request for information under subsection (a), information provided to another Federal or State regulatory agency, publicly available information, or externally audited financial statements to the extent that the Corporation determines such information is adequate to the needs of the Corporation.''.

SA 4140. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

SEC. ___. PROPRIETARY TRADING.

(a) DEFINITION.—Notwithstanding section 619(a), for purposes of section 619, the term ''insured depository institution'' does not include an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).

(b) EXCEPTIONS.—Notwithstanding section 619(c), for purposes of section 619, an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company may sponsor or invest in a hedge fund or a private equity fund, if—

(1) such institution, company, or subsidiary provides trust, fiduciary, or advisory services to the fund;

(2) the fund is sponsored and offered in connection with the provision of trust, fiduciary, or advisory services by such institution, company, or subsidiary to persons who are, or may be, customers or clients of such institution, company, or subsidiary;

(3) such institution, company, or subsidiary—

(A) does not acquire or retain an equity, partnership, or ownership interest in the fund; or

(B) acquires or retains an equity, partnership, or ownership interest, if—

(i) on the date that is 12 months after the date on which the fund is established, the equity, partnership, or ownership interest is not greater than 10 percent of the total equity of the fund; and

(ii) the aggregate equity investments by such institution, company, or subsidiary in the fund do not exceed 5 percent of Tier 1 capital of such institution, company, or subsidiary;

(4) such institution, company, or subsidiary does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), except on terms and under circumstances specified in section 23B of the Federal Reserve Act (12 U.S.C. 371c–1);

(5) the obligations of the fund are not guaranteed, directly or indirectly, by such institution, company, or subsidiary any affiliate of such institution, company, or subsidiary; and

(6) such institution, company, or subsidiary does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

SA 4141. Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 1030. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.

(a) REPEAL.—Notwithstanding any other provision of this Act, section 911 of this Act is repealed, effective on the date of enactment of this Act, and shall have no force or effect on or after that date of enactment.

(b) INVESTOR ADVISORY COMMITTEE ESTABLISHED.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

''SEC. 39. INVESTOR ADVISORY COMMITTEE.

''(a) ESTABLISHMENT AND PURPOSE.—

''(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the 'Committee').

''(2) PURPOSE.—The Committee shall—

''(A) advise and consult with the Commission on—

''(i) regulatory priorities of the Commission;

''(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

''(iii) initiatives to protect investor interests, including initiatives to protect investors against the material risks to investors associated with companies in the extractive industries sector, including—

''(I) unique tax and reputational risks, in the form of country-specific taxes and regulations;

''(II) the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments; and

''(III) the potential for unstable and high-cost operating environments for multinational companies operating in foreign countries; and

''(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

''(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The members of the Committee shall be—

''(A) the Investor Advocate;

''(B) a representative of State securities commissions;

''(C) a representative of the interests of senior citizens; and

''(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

''(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

''(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

''(iii) are knowledgeable about investment issues and decisions; and

''(iv) have reputations of integrity.

''(2) TERM.—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

''(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

''(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

''(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

''(A) a chairman, who may not be employed by an issuer;

''(B) a vice chairman, who may not be employed by an issuer;

''(C) a secretary; and

''(D) an assistant secretary.

''(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

''(d) MEETINGS.—

''(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

''(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

''(B) from time to time, at the call of the Commission.

''(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

''(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

''(1) be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

''(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

''(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

''(g) REVIEW BY COMMISSION.—The Commission shall—

''(1) review the findings and recommendations of the Committee

''(2) make recommendations to the Commission on the advisability of making public the information required to be disclosed under section 13(p)(2); and

''(3) each time the Committee submits a finding or recommendation to the Commission under paragraph (1), issue a public statement—

''(A) assessing the finding or recommendation of the Committee; and

''(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

''(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

''(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.''.

(c) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE.—

''(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

''(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(D) INTERACTIVE DATA STANDARD.—

''(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) AVAILABILITY OF INFORMATION.—

''(A) PUBLIC AVAILABILITY OF INFORMATION.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).''.

SA 4142. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4050 submitted by Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following: ''effective.

SEC. 995. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.

(a) REPEAL.—Notwithstanding any other provision of this Act, section 911 of this Act is repealed, effective on the date of enactment of this Act, and shall have no force or effect on or after that date of enactment.

(b) INVESTOR ADVISORY COMMITTEE ESTABLISHED.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

''SEC. 39. INVESTOR ADVISORY COMMITTEE.

''(a) ESTABLISHMENT AND PURPOSE.—

''(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the 'Committee').

''(2) PURPOSE.—The Committee shall—

''(A) advise and consult with the Commission on—

''(i) regulatory priorities of the Commission;

''(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

''(iii) initiatives to protect investor interests, including initiatives to protect investors against the material risks to investors associated with companies in the extractive industries sector, including—

''(I) unique tax and reputational risks, in the form of country-specific taxes and regulations;

''(II) the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments; and

''(III) the potential for unstable and high-cost operating environments for multinational companies operating in foreign countries; and

''(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

''(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The members of the Committee shall be—

''(A) the Investor Advocate;

''(B) a representative of State securities commissions;

''(C) a representative of the interests of senior citizens; and

''(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

''(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

''(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

''(iii) are knowledgeable about investment issues and decisions; and

''(iv) have reputations of integrity.

''(2) TERM.—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

''(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

''(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

''(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

''(A) a chairman, who may not be employed by an issuer;

''(B) a vice chairman, who may not be employed by an issuer;

''(C) a secretary; and

''(D) an assistant secretary.

''(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

''(d) MEETINGS.—

''(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

''(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

''(B) from time to time, at the call of the Commission.

''(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

''(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

''(1) be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

''(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

''(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

''(g) REVIEW BY COMMISSION.—The Commission shall—

''(1) review the findings and recommendations of the Committee

''(2) make recommendations to the Commission on the advisability of making public the information required to be disclosed under section 13(p)(2); and

''(3) each time the Committee submits a finding or recommendation to the Commission under paragraph (1), issue a public statement—

''(A) assessing the finding or recommendation of the Committee; and

''(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

''(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

''(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.''.

(c) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE.—

''(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

''(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(D) INTERACTIVE DATA STANDARD.—

''(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) AVAILABILITY OF INFORMATION.—

''(A) PUBLIC AVAILABILITY OF INFORMATION.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).''.

SA 4143. Mr. DODD submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1, after ''page 1235,'' strike ''line 10'' and all that follows through line 3, and insert: ''on line 6, strike ''the Bureau'' and all that follows through line 10 and insert: ''the Bureau shall consider the potential benefits and costs to covered persons and to consumers, including costs arising from the potential reduction of access by consumers to consumer financial products or service resulting from such rule and, when promulgating a final rule, shall set forth in the adopting release such consideration of the potential benefits and costs of the rule;''.''

SA 4144. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 122. DISCLOSURE OF CONFLICTS OF INTERESTS.

(a) RECOMMENDATION BY COUNCIL.—The Council shall issue recommendations to the primary financial regulatory agencies to require, as applicable, bank holding companies or nonbank financial companies under their respective jurisdictions to make appropriate disclosures to any purchaser or prospective purchaser of financial products from such companies, if such companies have a direct financial interest that is in material conflict with the interests of the purchaser or prospective purchaser with respect to the transaction involving such financial products.

(b) PROCEDURES AND IMPLEMENTATION.—The procedural and implementation provisions of subsection (b) and (c) of section 120 shall apply to recommendations of the Council under this section. In issuing such recommendations, the Council shall take into account the existence of, and firewalls between, separate business units of such companies.

SA 4145. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 3776 proposed by Mr. SPECTER (for himself, Mr. REED, Mr. KAUFMAN, Mr. DURBIN, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. MENENDEZ, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. FEINGOLD, and Mr. MERKLEY) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 929D. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following:

''(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

''(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person, if the Commission finds, on the record, after notice and opportunity for hearing, that—

''(A) the person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

''(B) the imposition of the penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless

disregard of a regulatory requirement, the maximum amount of penalty for each act or omission shall be $75,000 for a natural person or $375,000 for any other person.

''(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be $150,000 for a natural person or $725,000 for any other person, if—

''(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

''(ii) the act or omission directly or indirectly resulted in—

''(I) substantial losses or created a significant risk of substantial losses to other persons; or

''(II) substantial pecuniary gain to the person who committed the act or omission.

''(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.''.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) by striking the undesignated matter immediately following paragraph (4);

(2) in the matter preceding paragraph (1), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(3) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the subparagraph margins accordingly;

(4) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

''(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) by striking the matter immediately following subparagraph (C);

(2) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest, and'';

(3) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the clause margins accordingly;

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) by striking the undesignated matter immediately following subparagraph (D);

(2) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(3) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the clause margins accordingly;

(4) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(5) by adding at the end the following:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

SA 4146. Mr. ENSIGN proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 1273, delete lines 17–18.

SA 4147. Mr. DODD (for Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. VOINOVICH)) proposed an amendment to the bill S. 920, to amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The effective deployment of information technology can make the Federal Government more efficient, effective, and transparent.

(2) Historically, the Federal Government has struggled to properly plan, manage, and deliver information technology investments on time, on budget, and performing as planned.

(3) The Office of Management and Budget has made significant progress overseeing information technology investments made by Federal agencies, but continues to struggle to ensure that such investments meet cost, schedule, and performance expectations.

(4) Congress has limited knowledge of the actual cost, schedule, and performance of agency information technology investments and has difficulty providing the necessary oversight.

(5) In July 2008, an official of the Government Accountability Office testified before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security of the Committee on Homeland Security and Governmental Affairs of the Senate, stating that—

(A) agencies self-report inaccurate and unreliable project management data to the Office of Management and Budget and Congress; and

(B) the Office of Management and Budget should establish a mechanism that would provide real-time project management information and force agencies to improve the accuracy and reliability of the information provided.

SEC. 3. REAL-TIME TRANSPARENCY OF IT INVESTMENT PROJECTS.

Section 11302(c)(1) of title 40, United States Code, is amended by striking the period at the end and inserting the following: '', including ensuring the effective operation of a Web site, updating the Web site, at a minimum, on a quarterly basis, and including on the Web site, not later than 90 days after the date of the enactment of the Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009—

''(1) the accurate cost, schedule, and performance information since the commencement of the project of all major information technology investments reported in a manner consistent with policy established by the Office of Management and Budget on the use of earned-value management data, which should be based on the ANSI–EIA–748–B standard or another objective performance-based management system approved by the E-Government Administrator;

''(2) a graphical depiction of trend information, to the extent practicable, since the commencement of the major IT investment;

''(3) a clear delineation of major IT investments that have experienced cost, schedule, or performance variance greater than 10 percent over the life cycle of the investment, and the extent of the variation;

''(4) an explanation of the reasons the investment deviated from the benchmark established at the commencement of the project; and

''(5) the number of times investments were rebaselined and the dates on which such rebaselines occurred.''.

SEC. 4. IT INVESTMENT PROJECTS.

(a) SIGNIFICANT AND GROSS DEVIATIONS.—Section 11317 of title 40, United States Code, is amended to read as follows:

''SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.

''(a) DEFINITIONS.—In this subchapter:

''(1) AGENCY HEAD.—The term 'Agency Head' means the head of the Federal agency that is primarily responsible for the IT investment project under review.

''(2) ANSI EIA–748–B STANDARD.—The term 'ANSI EIA–748–B Standard' means the measurement tool jointly developed by the American National Standards Institute and the

Electronic Industries Alliance to analyze Earned Value Management systems.

''(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

''(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

''(B) the Committee on Oversight and Government Reform of the House of Representatives;

''(C) the Committee on Appropriations of the Senate;

''(D) the Committee on Appropriations of the House of Representatives; and

''(E) any other relevant congressional committee with jurisdiction over an agency required to take action under this section.

''(4) CHIEF INFORMATION OFFICER.—The term 'Chief Information Officer' means the Chief Information Officer designated under section 3506(a)(2) of title 44 of the Executive department (as defined in section 101 of title 5) that is primarily responsible for the IT investment project under review.

''(5) CORE IT INVESTMENT PROJECT.—The terms 'core IT investment project' and 'core project' mean a mission critical IT investment project designated as such by the Chief Information Officer, with approval by the Agency Head under subsection (b).

''(6) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.

''(7) EARNED VALUE MANAGEMENT.—The term 'Earned Value Management' means the cost, schedule, and performance data used to determine project status and developed in accordance with the ANSI EIA–748-B Standard.

''(8) GROSSLY DEVIATED.—The term 'grossly deviated' means cost, schedule, or performance variance that is at least 40 percent from the Original Baseline.

''(9) INDEPENDENT COST ESTIMATE.—The term 'independent cost estimate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with acquisitions related to an IT investment project, which—

''(A) is based on programmatic and technical specifications provided by the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

''(B) is formulated and provided by an entity other than the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

''(C) contains sufficient detail to inform the selection of an Earned Value Management baseline benchmark measure under the ANSI EIA–748-B standard; and

''(D) accounts for the full life cycle cost plus associated operations and maintenance expenses over the usable life of the project's deliverables.

''(10) LIFE CYCLE COST.—The term 'life cycle cost' means the total cost of an IT investment project for planning, research and development, modernization, enhancement, operation, and maintenance.

''(11) MAJOR IT INVESTMENT PROJECT.—The terms 'major IT investment project' and 'project' mean an information technology system or information technology acquisition that—

''(A) requires special management attention because of its importance to the mission or function of the agency, a component of the agency, or another organization;

''(B) is for financial management and obligates more than $500,000 annually;

''(C) has significant program or policy implications;

''(D) has high executive visibility;

''(E) has high development, operating, or maintenance costs;

''(F) is funded through other than direct appropriations; or

''(G) is defined as major by the agency's capital planning and investment control process.

''(12) ORIGINAL BASELINE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the term 'Original Baseline' means the ANSI EIA–748–B Standard-compliant Earned Value Management benchmark or an equivalent benchmark approved by the Office of Management and Budget and established at the commencement of an IT investment project.

''(B) GROSSLY DEVIATED PROJECT.—If an IT investment project grossly deviates from its Original Baseline (as defined in subparagraph (A)), the term 'Original Baseline' means the ANSI EIA–748–B Standard-compliant Earned Value Management benchmark or an equivalent benchmark approved by the Office of Management and Budget and established under subsection (e)(3)(C).

''(13) SIGNIFICANTLY DEVIATED.—The term 'significantly deviated' means cost, schedule, or performance variance that is at least 20 percent from the Original Baseline.

''(b) CORE IT INVESTMENT PROJECTS DESIGNATION.—Each Chief Information Officer, with approval by the Agency Head, shall—

''(1) identify the major IT investments that are the most critical to the agency; and

''(2) designate any project as a 'core IT investment project' or a 'core project', upon determining that the project is a mission critical IT investment project that—

''(A) represents a significant high dollar value relative to the average IT investment project in the agency's portfolio;

''(B) delivers a capability critical to the successful completion of the agency mission, or a portion of such mission;

''(C) incorporates unproven or previously undeveloped technology to meet primary project technical requirements; or

''(D) would have a significant negative impact on the successful completion of the agency mission if the project experienced significant cost, schedule, or performance deviations.

''(c) COST, SCHEDULE, AND PERFORMANCE REPORTS.—

''(1) QUARTERLY REPORTS.—Not later than 14 days after the end of each fiscal quarter, the project manager designated by the Agency Head for an IT investment project shall submit information to the Chief Information Officer that includes, as of the last day of the applicable quarter—

''(A) a description of the cost, schedule, and performance of all projects under the project manager's supervision;

''(B) the original and current project cost, schedule, and performance benchmarks for each project under the project manager's supervision;

''(C) the quarterly and cumulative cost, schedule, and performance variance related to each IT investment project under the project manager's supervision since the commencement of the project;

''(D) for each project under the project manager's supervision, any known, expected, or anticipated changes to project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

''(E) the current cost, schedule, and performance status of all projects under supervision that were previously identified as significantly deviated or grossly deviated; and

''(F) any corrective actions taken to address problems discovered under subparagraphs (C) through (E).

''(2) INTERIM REPORTS.—If the project manager for an IT investment project determines that there is reasonable cause to believe that an IT investment project has significantly deviated or grossly deviated since the issuance of the latest quarterly report, the project manager shall submit to the Chief Information Officer, not later than 21 days after such determination, information on the project that includes, as of the date of the report—

''(A) a description of the original and current program cost, schedule, and performance benchmarks;

''(B) the cost, schedule, or performance variance related to the IT investment project since the commencement of the project;

''(C) any known, expected, or anticipated changes to the project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

''(D) the major reasons underlying the significant or gross deviation of the project; and

''(E) a corrective action plan to correct such deviations.

''(d) DETERMINATION OF SIGNIFICANT DEVIATION.—

''(1) CHIEF INFORMATION OFFICER.—Upon receiving information under subsection (c), the Chief Information Officer shall—

''(A) determine if any IT investment project has significantly deviated; and

''(B) report such determination to the Agency Head.

''(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has significantly deviated and the Agency Head has not submitted information to the appropriate congressional committees of a significant deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit information to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

''(A) notification of such determination;

''(B) the date on which such determination was made;

''(C) the amount of the cost increases and the extent of the schedule delays with respect to such project;

''(D) any requirements that—

''(i) were added subsequent to the original baseline; or

''(ii) were originally contracted for, but were changed by deferment or deletion from the original baseline, or were otherwise no longer included in the requirements contracted for;

''(E) an explanation of the differences between—

''(i) the estimate at completion between the project manager, any contractor, and any independent analysis; and

''(ii) the original budget at completion;

''(F) a statement of the reasons underlying the project's significant deviation; and

''(G) a summary of the plan of action to remedy the significant deviation.

''(3) DEADLINE.—

''(A) NOTIFICATION BASED ON QUARTERLY REPORT.—If the determination of significant deviation is based on information submitted under subsection (c)(1), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the end of the quarter upon which such information is based.

''(B) NOTIFICATION BASED ON INTERIM REPORT.—If the determination of significant deviation is based on information submitted under subsection (c)(2), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the submission of such information.

''(e) DETERMINATION OF GROSS DEVIATION.—

''(1) CHIEF INFORMATION OFFICER.—Upon receiving information under subsection (c), the Chief Information Officer shall—

''(A) determine if any IT investment project has grossly deviated; and

''(B) report any such determination to the Agency Head.

''(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has grossly deviated and the Agency Head has not submitted information to the appropriate congressional committees of a gross deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit information to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

''(A) notification of such determination, which—

''(i) identifies the date on which such determination was made; and

''(ii) indicates whether or not the project has been previously reported as a significant or gross deviation by the Chief Information Officer, and the date of any such report;

''(B) incorporations by reference of all prior reports to Congress on the project required under this section;

''(C) updated accounts of the items described in subparagraphs (C) through (G) of subsection (d)(2);

''(D) the original estimate at completion for the project manager, any contractor, and any independent analysis;

''(E) a graphical depiction that shows monthly planned expenditures against actual expenditures since the commencement of the project;

''(F) the amount, if any, of incentive or award fees any contractor has received since the commencement of the contract and the reasons for receiving such incentive or award fees;

''(G) the project manager's estimated cost at completion and estimated completion date for the project if current requirements are not modified;

''(H) the project manager's estimated cost at completion and estimated completion date for the project based on reasonable modification of such requirements;

''(I) an explanation of the most significant occurrence contributing to the variance identified, including cost, schedule, and performance variances, and the effect such occurrence will have on future project costs and program schedule;

''(J) a statement regarding previous or anticipated rebaselining or replanning of the project and the names of the individuals responsible for approval;

''(K) the original life cycle cost of the investment and the expected life cycle cost of the investment expressed in constant base year dollars and in current dollars; and

''(L) a comprehensive plan of action to remedy the gross deviation, and milestones established to control future cost, schedule, and performance deviations in the future.

''(3) REMEDIAL ACTION.—

''(A) IN GENERAL.—If the Chief Information Officer determines under paragraph (1)(A) that an IT investment project has grossly deviated, the Agency Head, in consultation with the Chief Information Officer and the appropriate project manager, shall develop and implement a remedial action plan that includes—

''(i) a report that—

''(I) describes the primary business case and key functional requirements for the project;

''(II) describes any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

''(III) includes a certification by the Agency Head, after consultation with the Chief Information Officer, that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case;

''(IV) describes any changes to the primary business case or key functional requirements which have occurred since project inception; and

''(V) includes an independent government cost estimate for the project conducted by an entity approved by the Director;

''(ii) an analysis that—

''(I) describes agency business goals that the project was originally designed to address;

''(II) includes a gap analysis of what project deliverables remain in order for the agency to accomplish the business goals referred to in subclause (I);

''(III) identifies the 3 most cost-effective alternative approaches to the project which would achieve the business goals referred to in subclause (I); and

''(IV) includes a cost-benefit analysis, which compares—

''(aa) the completion of the project with the completion of each alternative approach, after factoring in future costs associated with the termination of the project; and

''(bb) the termination of the project without pursuit of alternatives, after factoring in foregone benefits; and

''(iii) a new baseline of the project is established that is consistent with the independent government cost estimate required under clause (i)(V); and

''(iv) the project is designated as a core IT investment project and subjected to the requirements under subsection (f).

''(B) SUBMISSION TO CONGRESS.—The remedial action plan and all corresponding reports, analyses, and actions under this paragraph shall be submitted to the appropriate congressional committees and the Director.

''(C) REPORTING AND ANALYSIS EXEMPTIONS.—

''(i) IN GENERAL.—The Chief Information Officer, in coordination with the Agency Head and the Director, may forego the completion of any element of a report or analysis under clause (i) or (ii) of subparagraph (A) if the Chief Information Officer determines that such element is not relevant to the understanding of the challenges facing the project or that such element does not further the remedial steps necessary to ensure that the project is completed in a timely and cost-efficient manner.

''(ii) IDENTIFICATION OF REASONS.—The Chief Information Officer shall include the reasons for not including any element referred to in clause (i) in the report submitted to Congress under subparagraph (B).

''(4) DEADLINE AND FUNDING CONTINGENCY.—

''(A) NOTIFICATION AND REMEDIAL ACTION BASED ON QUARTERLY REPORT.—

''(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(1), the Agency Head shall—

''(I) not later than 45 days after the end of the quarter upon which such report is based, notify the appropriate congressional committees and the Director in accordance with paragraph (2); and

''(II) not later than 180 days after the end of the quarter upon which such report is based, ensure the completion of remedial action under paragraph (3).

''(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled, except for expenditures to address reporting notifications, remedial actions, and other requirements under this Act.

''(B) NOTIFICATION AND REMEDIAL ACTION BASED ON INTERIM REPORT.—

''(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(2), the Agency Head shall—

''(I) not later than 45 days after the submission of such report, notify the appropriate congressional committees in accordance with paragraph (2); and

''(II) not later than 180 days after the submission of such report, ensure the completion of remedial action in accordance with paragraph (3).

''(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled, except for expenditures to address reporting notifications, remedial actions, and other requirements under this Act.

''(f) ADDITIONAL REQUIREMENTS FOR CORE IT INVESTMENT PROJECT REPORTS.—

''(1) INITIAL REPORT.—If a remedial action plan described in subsection (e)(3)(A) has not been submitted for a core IT investment project, the Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall prepare an initial report for inclusion in the first budget submitted to Congress under section 1105(a) of title 31, United States Code, after the designation of a project as a core IT investment project, which includes—

''(A) a description of the primary business case and key functional requirements for the project;

''(B) an identification and description of any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

''(C) an independent cost estimate for the project;

''(D) certification by the Chief Information Officer that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

''(E) any changes to the primary business case or key functional requirements which have occurred since project inception.

''(2) QUARTERLY REVIEW OF BUSINESS CASE.—The Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall—

''(A) monitor the primary business case and core functionality requirements reported to Congress and the Director for designated core IT investment projects; and

''(B) if changes to the primary business case or key functional requirements for a core IT investment project occur in any fiscal quarter, submit a report to Congress and the Director not later than 14 days after the end of such quarter that details the changes and describes the impact the changes will have on the cost and ultimate effectiveness of the project.

''(3) ALTERNATIVE SIGNIFICANT DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have significantly deviated—

''(A) the Chief Information Officer shall notify the Agency Head of the significant deviation; and

''(B) the Agency Head shall fulfill the requirements under subsection (d)(2) in accordance with the deadlines under subsection (d)(3).

''(4) ALTERNATIVE GROSS DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have grossly deviated—

''(A) the Chief Information Officer shall notify the Agency Head of the gross deviation; and

''(B) the Agency Head shall fulfill the requirements under subsections (e)(2) and (e)(3) in accordance with subsection (e)(4).

''(g) METHOD OF DELIVERY.—Reports and other information required under this section may be submitted through the Web site established under section 11302(c)(1) in a manner consistent with guidance from the Office of Management and Budget to satisfy reporting requirements and to reduce paperwork.

''(h) DEPARTMENT OF DEFENSE ACQUISITIONS.—The requirements of section 2445a of title 10, United States Code, shall apply to the information technology investment projects of the Department of Defense instead of the requirements under this section.''.

(b) INCLUSION IN THE BUDGET SUBMITTED TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''include in each budget the following:'' and inserting ''include in each budget—'';

(2) by redesignating the second paragraph (33) (as added by section 889(a) of Public Law 107–296) as paragraph (35);

(3) in each of paragraphs (1) through (34), by striking the period at the end and inserting a semicolon;

(4) in paragraph (35), as redesignated by paragraph (2), by striking the period at the end and inserting ''; and''; and

(5) by adding at the end the following:

''(36) the reports prepared under section 11317(f) of title 40, United States Code, relating to the core IT investment projects of the agency.''.

(c) IMPROVEMENT OF INFORMATION TECHNOLOGY ACQUISITION AND DEVELOPMENT.—Subchapter II of chapter 113 of title 40, United States Code, is amended by adding at the end the following:

''SEC. 11319. ACQUISITION AND DEVELOPMENT.

''(a) PURPOSE.—The objective of this section is to significantly reduce—

''(1) cost overruns and schedule slippage from the estimates established at the time the program is initially approved;

''(2) the number of requirements and business objectives at the time the program is approved that are not met by the delivered products; and

''(3) the number of critical defects and serious defects in delivered information technology.

''(b) OMB GUIDANCE.—The Director of the Office of Management and Budget shall—

''(1) not later than 180 days after the date of the enactment of this section, prescribe uniformly applicable guidance for agencies to implement the requirements of this section, which shall not include any exemptions to such requirements not specifically authorized under this section; and

''(2) take any actions that are necessary to ensure that Federal agencies are in compliance with the guidance prescribed pursuant to paragraph (1) not later than 1 year after the date of the enactment of this section.

''(c) ESTABLISHMENT OF PROGRAM.—Not later than 180 days after the date of the enactment of this section, each Agency Head (as defined in section 11317(a) of title 40, United States Code) shall establish a program to improve the information technology (referred to in this section as 'IT') processes overseen by the Chief Information Officer.

''(d) PROGRAM REQUIREMENTS.—Each program established pursuant to this section shall include—

''(1) a documented process for IT acquisition planning, requirements development and management, project management and oversight, earned-value management, and risk management;

''(2) the development of appropriate metrics that can be implemented and monitored on a real-time dashboard for performance measurement of—

''(A) processes and development status of investments;

''(B) continuous process improvement of the program; and

''(C) achievement of program and investment outcomes;

''(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education, at an institution or institutions approved by the Director, in the planning, acquisition, execution, management, and oversight of IT;

''(4) a process to ensure that the agency implements and adheres to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of IT programs and developments; and

''(5) a process for the Chief Information Officer to intervene or stop the funding of an IT investment if it is at risk of not achieving major project milestones.

''(e) ANNUAL REPORT TO OMB.—Not later than the last day of February of each year, the Agency Head shall submit a report to the Office of Management and Budget that includes—

''(1) a detailed summary of the accomplishments of the program established by the Agency Head pursuant to this section;

''(2) the status of completeness of implementation of each of the program requirements, and the date each such requirement was deemed to be completed;

''(3) the percentage of Federal IT projects covered under the program compared to all of the IT projects of the agency, listed by number of programs and by annual dollars expended;

''(4) a detailed breakdown of the sources and uses of the amounts spent by the agency during the previous fiscal year to support the activities of the program;

''(5) a copy of any guidance issued under the program and a statement regarding whether each such guidance is mandatory;

''(6) the identification of the metrics developed in accordance with subsection (b)(2);

''(7) a description of how paragraphs (3) and (4) of subsection (b) have been implemented and any related agency guidance; and

''(8) a description of how agencies will continue to review and update the implementation and objectives of such guidance.

''(f) ANNUAL REPORT TO CONGRESS.—The Director of the Office of Management and Budget shall provide an annual report to Congress on the status and implementation of the program established pursuant to this section.

''(g) DEPARTMENT OF DEFENSE ACQUISITIONS.—The requirements of section 2223a of title 10, United States Code, shall apply to the information technology investment projects of the Department of Defense instead of the requirements under this section.''.

(d) CLERICAL AMENDMENTS.—The table of sections for chapter 113 of title 40, United States Code, is amended—

(1) by striking the item relating to section 11317 and inserting the following:

''11317. Significant and gross deviations.''; and

(2) by inserting after the item relating to section 11318 the following:

''11319. Acquisition and development.''.

SEC. 5. MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS OF THE DEPARTMENT OF DEFENSE.

(a) PROGRAM TO IMPROVE INFORMATION TECHNOLOGY PROCESSES.—Chapter 131 of title 10, United States Code, is amended by adding after section 2223 the following:

''§ 2223a. Information technology acquisition planning and oversight requirements

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.

''(b) PROGRAM COMPONENTS.—The program established under subsection (a) shall include—

''(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned value management, and risk management;

''(2) the development of appropriate metrics that can be implemented and monitored on a real-time basis for performance measurement of—

''(A) processes and development status of investments in major automated information system programs;

''(B) continuous process improvement of the program; and

''(C) achievement of program and investment outcomes;

''(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education in the planning, acquisition, execution, management, and oversight of information technology systems;

''(4) a process to ensure that military departments and defense agencies adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments; and

''(5) a process under which an appropriate Department of Defense official may intervene or terminate the funding of an information technology investment if the investment is at risk of not achieving major project milestones.''.

(b) ANNUAL REPORT TO CONGRESS.—Section 2445b(b) of title 10, United States Code is amended by adding at the end the following:

''(5) For each major automated information system program for which such information has not been provided in a previous annual report—

''(A) a description of the primary business case and key functional requirements for the program;

''(B) a description of the analysis of alternatives conducted with regard to the program;

''(C) an assessment of the extent to which the program, or portions of the program, have technical requirements of sufficient clarity that the program, or portions of the program, may be feasibly procured under firm, fixed-price contracts;

''(D) the most recent independent cost estimate or cost analysis for the program provided by the Director of Cost Assessment and Program Evaluation in accordance with section 2334(a)(6);

''(E) a certification by a Department of Defense acquisition official with responsibility for the program that all technical and business requirements have been reviewed and validated to ensure alignment with the business case; and

''(F) an explanation of the basis for the certification described in subparagraph (E).

''(6) For each major automated information system program for which the information required under paragraph (5) has been provided in a previous annual report, a summary of any significant changes to the information previously provided.''.

SEC. 6. IT SWAT TEAM.

(a) PURPOSE.—The Director of the Office of Management of Budget (referred to in this section as the ''Director''), in consultation with the Administrator of the Office of Electronic Government and Information and Technology at the Office of Management and Budget (referred to in this section as the ''E-Gov Administrator''), shall assist agencies in avoiding significant and gross deviations in the cost, schedule, and performance of IT investment projects (as such terms are defined in section 11317(a) of title 40, United States Code).

(b) IT SWAT TEAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Director shall promulgate policy and guidance for the head of each Federal agency that establishes procedures for the creation of a small group of individuals (referred to in this section as the ''IT SWAT Team'') to carry out the purpose described in subsection (a).

(2) QUALIFICATIONS.—Individuals selected for the IT SWAT Team—

(A) shall be certified at the Senior/Expert level according to the Federal Acquisition Certification for Program and Project Managers (FAC–P/PM);

(B) shall have comparable education, certification, training, and experience to successfully manage high-risk IT investment projects; or

(C) shall have expertise in the successful management or oversight of planning, architecture, process, integration, or other technical and management aspects using proven process best practices on high-risk IT investment projects.

(3) NUMBER.—The Director, in consultation with the E-Gov Administrator and the head of the agency primarily responsible for the IT investment, shall determine the number of individuals who will be selected for the IT SWAT Team.

(c) OUTSIDE CONSULTANTS.—

(1) IDENTIFICATION.—The E-Gov Administrator and representatives of the Chief Information Officers Council shall identify consultants in the private sector who have expert knowledge in IT program management and program management review teams. Not more than 20 percent of such consultants may be formally associated with any 1 of the following types of entities:

(A) Commercial firms.

(B) Nonprofit entities.

(C) Federally funded research and development centers.

(2) USE OF CONSULTANTS.—

(A) IN GENERAL.—Consultants identified under paragraph (1) may be used to assist the IT SWAT Team in assessing and improving IT investment projects.

(B) LIMITATION.—Consultants with a formally established relationship with an organization may not participate in any assessment involving an IT investment project for which such organization is under contract to provide technical support.

(C) EXCEPTION.—The limitation described in subparagraph (B) may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(3) CONTRACTS.—The E-Gov Administrator, in conjunction with the Administrator of the General Services Administration (GSA), may establish competitively bid contracts with 1 or more qualified consultants, independent of any GSA schedule.

(d) INITIAL RESPONSE TO ANTICIPATED SIGNIFICANT OR GROSS DEVIATION.—If the head of the Federal agency primarily responsible for the major IT investment or the E-Gov Administrator determines that there is reasonable cause to believe that a major IT investment project is likely to significantly or grossly deviate (as defined in section 11317(a) of title 40, United States Code), including the receipt of inconsistent or missing data, or if such agency head or the E–Gov Administrator determines that the assignment of 1 or more members of the IT SWAT Team could meaningfully reduce the possibility of significant or gross deviation, such agency head or the E-Gov Administrator shall carry out the following activities:

(1) Recommend the assignment of 1 or more members of the IT SWAT Team to assess the project in accordance with the scope and time period described in section 11317(c)(1) of title 40, United States Code, beginning not later than 14 days after such recommendation. No member of the SWAT Team who is associated with the department or agency whose IT investment project is the subject of the assessment may be assigned to participate in this assessment. Such limitation may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(2) If such agency head or the E-Gov Administrator determines that 1 or more qualified consultants are needed to support the efforts of the IT SWAT Team under paragraph (1), negotiate a contract with the consultant to provide such support during the period in which the IT SWAT Team is conducting the assessment described in paragraph (1).

(3) Ensure that the costs of an assessment under paragraph (1) and the support services of 1 or more consultants under paragraph (2) are paid for by the agency being assessed.

(4) Monitor the progress made by the IT SWAT Team in assessing the project.

(e) REDUCTION OF SIGNIFICANT OR GROSS DEVIATION.—If the agency head described in subsection (d) or the E-Gov Administrator determines that the assessment conducted under subsection (d) confirms that a major IT investment project is likely to significantly or grossly deviate, such agency head or the E-Gov Administrator shall take steps to reduce the deviation, which may include—

(1) providing training, education, or mentoring to improve the qualifications of the program manager;

(2) replacing the program manager or other staff;

(3) supplementing the program management team with Federal Government employees or independent contractors;

(4) terminating the project; or

(5) hiring an independent contractor to report directly to senior management and the E-Gov Administrator.

(f) ENFORCEMENT OF ACCOUNTABILITY.—The Director may use the actions directed under section 11303(b)(5) of title 5, United States Code, to enforce accountability of the head of the agency and for the investments made by the agency in information technology.

(g) REPORT TO CONGRESS.—The Director shall include in the annual Report to Congress on the Benefits of E-Government Initiatives a detailed summary of the composition and activities of the IT SWAT Team, including—

(1) the number and qualifications of individuals on the IT SWAT Team;

(2) a description of the IT investment projects that the IT SWAT Team has worked during the previous fiscal year;

(3) the major issues that necessitated the involvement of the IT SWAT Team to assist agencies with assessing and managing IT investment projects and whether such issues were satisfactorily resolved;

(4) if the issues referred to in paragraph (3) were not satisfactorily resolved, the issues still needed to be resolved and the Agency Head's plan for resolving such issues;

(5) a detailed breakdown of the sources and uses of the amounts spent by the Office of Management and Budget and other Federal agencies during the previous fiscal year to support the activities of the IT SWAT Team; and

(6) a determination of whether the IT SWAT Team has been effective in—

(A) preventing projects from deviating from the original baseline; and

(B) assisting agencies in conducting appropriate analysis and planning before a project is funded.

SEC. 7. AWARDS FOR PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF INFORMATION SYSTEMS AND INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Director of the Office of Personnel Management shall develop policy and guidance for agencies to develop a program to recognize excellent performance by Federal Government employees and teams of such employees in the acquisition of information systems and information technology for the agency.

(b) ELEMENTS.—The program referred to in subsection (a) shall, to the extent practicable—

(1) obtain objective outcome measures; and

(2) include procedures for—

(A) the nomination of Federal Government employees and teams of such employees for eligibility for recognition under the program; and

(B) the evaluation of nominations for recognition under the program by 1 or more agency panels of individuals from government, academia, and the private sector who have such expertise, and are appointed in such a manner, as the Director of the Office of Personal Management shall establish for purposes of the program.

(c) AWARD OF CASH BONUSES AND OTHER INCENTIVES.—As part of the program referred to in subsection (a), the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall establish policies and guidance for agencies to reward any Federal Government employee or teams of such employees recognized pursuant to the program—

(1) by awarding a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law;

(2) through promotions and other nonmonetary awards;

(3) by publicizing acquisition accomplishments by individual employees and, as appropriate, the tangible end benefits that resulted from such accomplishments; and

(4) through other awards, incentives, or bonuses that the head of the agency considers appropriate.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a meeting during the session of the Senate on May 19, 2010, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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